

**FOURTEENTH DAY**

(Tuesday, August 8, 1961)

The Senate met at 10:30 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present:

Aikin	Martin
Baker	Moffett
Calhoun	Moore
Colson	Owen
Creighton	Parkhouse
Crump	Patman
Dies	Ratliff
Fuller	Reagan
Gonzalez	Roberts
Hardeman	Rogers
Hazlewood	Schwartz
Herring	Secrest
Hudson	Smith
Kazen	Weinert
Krueger	Willis
Lane	

A quorum was announced present.

Reverend W. H. Townsend, Chaplain, offered the invocation.

On motion of Senator Aikin, and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal approved.

**House Concurrent Resolution 40 on  
Second Reading**

On motion of Senator Crump and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading the following resolution:

H. C. R. No. 40, Suspending the Joint Rules so either House may take up and consider House Bill No. 144 at any time.

The resolution was read and was adopted.

**Message from the House**

Hall of the House of Representatives  
Austin, Texas,  
August 8, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S. B. No. 29, A bill to be entitled "An Act directing payment of certain miscellaneous claims and judgments out of the sum appropriated for that purpose in the General Appropriation Bill; making an appropriation for and directing payment of certain miscellaneous claims and judgments out of other funds designated herein; requiring approval of claims in the manner specified in the Act before payment is made; and declaring an emergency."

(With amendments.)

The House has adopted the Conference Committee Report on House Bill No. 56 by a vote of 126 ayes, 6 noes.

H. B. No. 126, A bill to be entitled "An Act to permit the District Courts to form special juries and prescribe their areas of inquiry; providing that special grand juries shall have the same powers and qualifications as regular grand juries and shall be wholly privileged from libel actions; providing that special grand juries may hire assistants, not to exceed five (5) and fix their compensation; providing for terms of special grand juries and for extensions; and declaring an emergency."

S. B. No. 64, A bill to be entitled "An Act to amend Senate Bill No. 80, Chapter 260, Acts of Fifty-seventh Legislature, Regular Session, 1961, (codified as Article 2815-3 in Vernon's Annotated Civil Statutes) by the addition thereto of a new section to be designated Section 1a defining 'consolidation' for the purposes of Senate Bill 80, supra, and its application therein; and declaring an emergency."

H. C. R. No. 44, Suspending the Joint Rules so that either House may bring up at any time House Bill 37.

H. C. R. No. 42, Suspending the Joint Rules to take up House Bill No. 54 at any time.

H. C. R. No. 39, Suspending the Joint Rules of both Houses in order to consider House Bill No. 164 at any time.

S. C. R. No. 26, Commending those who had a part in the establishment of the Ed Felder Memorial Fund.

H. C. R. No. 43, Suspending the

Joint Rules to consider House Bill No. 49 and House Bill No. 156 at any time.

Respectfully submitted,  
DOROTHY HALLMAN,  
Chief Clerk, House of Representatives

#### House Bill 144 on Second Reading

On motion of Senator Crump and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H. B. No. 144, A bill to be entitled "An Act providing a fine for certain sales, releases, diversions and deliveries of diseased cattle; defining diseased cattle; and declaring an emergency."

The bill was read second time and passed to third reading.

#### House Bill 144 on Third Reading

Senator Crump moved that the Constitutional Rule and Senate Rule 32 requiring bills to be read on three several days be suspended and that H. B. No. 144 be placed on its third reading and final passage.

The motion prevailed by the following vote:

#### Yeas—31

Aikin	Martin
Baker	Moffett
Calhoun	Moore
Colson	Owen
Creighton	Parkhouse
Crump	Patman
Dies	Ratliff
Fuller	Reagan
Gonzalez	Roberts
Hardeman	Rogers
Hazlewood	Schwartz
Herring	Secrest
Hudson	Smith
Kazen	Weinert
Krueger	Willis
Lane	

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote:

#### Yeas—31

Aikin	Colson
Baker	Creighton
Calhoun	Crump

Dies	Owen
Fuller	Parkhouse
Gonzalez	Patman
Hardeman	Ratliff
Hazlewood	Reagan
Herring	Roberts
Hudson	Rogers
Kazen	Schwartz
Krueger	Secrest
Lane	Smith
Martin	Weinert
Moffett	Willis
Moore	

#### House Bill 5 on Third Reading

Senator Martin asked unanimous consent to suspend the regular order of business and take up H. B. No. 5 for consideration at this time.

There was objection.

Senator Martin then moved to suspend the regular order of business and take up H. B. No. 5 at this time.

The motion prevailed by the following vote:

#### Yeas—21

Aikin	Moffett
Baker	Moore
Colson	Patman
Creighton	Ratliff
Crump	Reagan
Dies	Roberts
Gonzalez	Rogers
Herring	Schwartz
Kazen	Secrest
Krueger	Willis
Martin	

#### Nays—10

Calhoun	Lane
Fuller	Owen
Hardeman	Parkhouse
Hazlewood	Smith
Hudson	Weinert

The President laid before the Senate on its third reading and final passage:

H. B. No. 5, Providing for making of reports by persons holding personal property subject to escheat, defining terms, etc.

The bill was read the third time.

Question on final passage, yeas and nays were demanded.

The bill was passed by the following vote:

## Yeas—18

Aikin	Krueger
Baker	Martin
Colson	Moffett
Creighton	Patman
Crump	Roberts
Dies	Rogers
Gonzalez	Schwartz
Herring	Secrest
Kazen	Willis

## Nays—12

Calhoun	Owen
Fuller	Parkhouse
Hardeman	Ratliff
Hazlewood	Reagan
Hudson	Smith
Lane	Weinert

## Absent

Moore

## Executive Session

On motion of Senator Dies and by unanimous consent the Senate agreed to hold an Executive Session at 11:00 o'clock a.m. today.

Accordingly, the President directed all those not entitled to attend the executive session of the Senate to retire from the Senate Chamber and instructed the Sergeant-at-Arms to close all doors leading from the Chamber.

At the conclusion of the executive session the Secretary of the Senate informed the Journal Clerk that the Senate had confirmed the following nominations of the Governor:

To be judge of the District Court of the 64th Judicial District, to fill the unexpired term of Judge H. M. LaFont, resigned: James A. Joy of Abernathy, Hale County.

To be a member and chairman of the State Board of Control, for a six-year term to expire August 31, 1967: E. E. McAdams of Austin, Travis County.

To be a member of the State Board of Control, for a term to expire August 31, 1965: Carl L. Phinney of Dallas, Dallas County.

## In Legislative Session

The President called the Senate to order as in Legislative Session at 11:33 o'clock a.m. today.

## House Concurrent Resolution 44 on Second Reading

On motion of Senator Crump and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading the following resolution:

H. C. R. No. 44, Suspending the Joint Rules so that either House may bring up at any time House Bill 37.

The resolution was read and was adopted.

## House Bill 37 on Second Reading

Senator Crump moved that Senate Rules 13 and 37 be suspended and that H. B. No. 37 be placed on its second reading and passage to third reading.

The motion prevailed by the following vote:

## Yeas—30

Aikin	Martin
Baker	Moffett
Calhoun	Moore
Colson	Owen
Creighton	Parkhouse
Crump	Patman
Dies	Ratliff
Fuller	Reagan
Gonzalez	Roberts
Hazlewood	Rogers
Herring	Schwartz
Hudson	Secrest
Kazen	Smith
Krueger	Weinert
Lane	Willis

## Nays—1

Hardeman

The President then laid before the Senate on its second reading and passage to third reading the following bill:

H. B. No. 37, A bill to be entitled "An Act amending Section 9 of Chapter 50, Acts of the 55th Legislature, Regular Session, 1957, relating to the regulatory authority of the Game and Fish Commission in certain counties, by withdrawing the veto power of the Commissioners Court in Llano County over orders, rules or regulations of the Game and Fish Commission promulgated for that County; and declaring an emergency."

The bill was read the second time.

Senator Crump offered the following amendment to the bill:

Amend House Bill No. 37 by striking out all below the enacting clause and substituting the following:

Section 1. Section 9 of Chapter 50, Acts of the 55th Legislature, Regular Session, 1957, is amended to read as follows:

"Section 9. Orders, rules and regulations adopted by said Commission shall become effective fifteen (15) days after their adoption, except in case of emergency as provided in this Act, and shall continue in full force and effect until they shall expire by their own terms, or are revoked or amended by said Commission, or except in case of disapproval by the Commissioners Court of the County, except Mason County and Llano County, in which the rule, regulation, or order is to be in effect. The Commissioners Court in each County, except Mason County and Llano County, affected by the rule, regulation, or order of the Commissioner shall approve or disapprove the Commission's rule, regulation, or order at its next regular meeting occurring more than five (5) days after said rule, regulation or order is promulgated. If approved, the rule, regulation, or order becomes effective immediately in accordance with the terms of this Act. If disapproved, no public hearing on a similar proposal for the County in which the Commissioners Court so disapproved said rule, regulation, or order may be held for a period of six (6) months, unless a majority of said Commissioners Court certifies to the Commission that there has been some material change in the surrounding circumstances which necessitates the holding of a public hearing within the six-month period."

Section 2. The importance of this legislation to the maintenance of the balanced game supply in Llano County and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

The amendment was adopted.

On motion of Senator Crump and by unanimous consent the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

#### Record of Vote

Senator Hardeman asked to be recorded as voting "Nay" on the passage of H. B. No. 37 to third reading.

#### House Bill 37 on Third Reading

Senator Crump moved that the Constitutional Rule and Senate Rule 32 requiring bills to be read on three several days be suspended and that H. B. No. 37 be placed on its third reading and final passage.

The motion prevailed by the following vote:

#### Yeas—30

Aikin	Martin
Baker	Moffett
Calhoun	Moore
Colson	Owen
Creighton	Parkhouse
Crump	Patman
Dies	Rathiff
Fuller	Reagan
Gonzalez	Roberts
Hazlewood	Rogers
Herring	Schwartz
Hudson	Secrest
Kazen	Smith
Krueger	Weinert
Lane	Willis

#### Nays—1

Hardeman

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote:

#### Yeas—30

Aikin	Fuller
Baker	Gonzalez
Calhoun	Hazlewood
Colson	Herring
Creighton	Hudson
Crump	Kazen
Dies	Krueger

Lane	Reagan
Martin	Roberts
Moffett	Rogers
Moore	Schwartz
Owen	Secrest
Parkhouse	Smith
Patman	Weinert
Ratliff	Willis

## Nays—1

Hardeman

**House Concurrent Resolution 43 on Second Reading**

On motion of Senator Owen and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading the following resolution:

H. C. R. No. 43, Suspending the Joint Rules to consider House Bill No. 49 and House Bill No. 156 at any time.

The resolution was read and was adopted.

**Motion to Place House Bill 49 on Second Reading**

Senator Owen moved that Senate Rules 13 and 37 be suspended and that H. B. 49 be placed on its second reading and passage to third reading.

The motion was lost by the following vote (not receiving two-thirds vote of the Members present):

## Yeas—19

Baker	Parkhouse
Dies	Patman
Fuller	Ratliff
Gonzalez	Reagan
Hazlewood	Rogers
Herring	Schwartz
Hudson	Secrest
Kazen	Smith
Lane	Willis
Owen	

## Nays—12

Aikin	Krueger
Calhoun	Martin
Colson	Moffett
Creighton	Moore
Crump	Roberts
Hardeman	Weinert

**House Bill 156 on Second Reading**

Senator Owen moved that Senate

Rules 13 and 37 be suspended and that H. B. No. 156 be placed on its second reading and passage to third reading.

The motion prevailed by the following vote:

## Yeas—26

Aikin	Martin
Baker	Moffett
Calhoun	Owen
Colson	Parkhouse
Creighton	Patman
Crump	Reagan
Dies	Roberts
Gonzalez	Rogers
Herring	Schwartz
Hudson	Secrest
Kazen	Smith
Krueger	Weinert
Lane	Willis

## Nays—3

Fuller	Ratliff
Hardeman	

## Absent

Hazlewood	Moore
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The President then laid before the Senate on its second reading and passage to third reading the following bill:

H. B. No. 156, A Bill to be entitled "An Act validating, ratifying, confirming and approving time warrants, script warrants, refunding bonds and contracts authorized by counties or cities (including Home Rule Cities) or towns since the approval by the Governor of Texas of Chapter 321, Acts of the Fifty-sixth Legislature, Regular Session, 1959; validating, ratifying, confirming and approving time warrants and refunding bonds issued for the purpose of refunding time warrants and all proceedings, governmental acts, orders, ordinances, resolutions, and other instruments relating to the issuance of time warrants and refunding bonds for such purposes, of counties, cities (including Home Rule Cities) and towns; . . . etc.; and declaring an emergency."

The bill was read second time and passed to third reading.

**House Bill 156 on Third Reading**

Senator Owen moved that the Constitutional Rule and Senate Rule 32

requiring bills to be read on three several days be suspended and that H. B. No. 156 be placed on its third reading and final passage.

The motion prevailed by the following vote.

## Yeas—29

Aikin	Moffett
Baker	Moore
Calhoun	Owen
Colson	Parkhouse
Creighton	Patman
Crump	Ratliff
Dies	Reagan
Gonzalez	Roberts
Hazlewood	Rogers
Herring	Schwartz
Hudson	Secrest
Kazen	Smith
Krueger	Weinert
Lane	Willis
Martin	

## Nays—2

Fuller	Hardeman
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The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote:

## Yeas—29

Aikin	Moffett
Baker	Moore
Calhoun	Owen
Colson	Parkhouse
Creighton	Patman
Crump	Ratliff
Dies	Reagan
Gonzalez	Roberts
Hazlewood	Rogers
Herring	Schwartz
Hudson	Secrest
Kazen	Smith
Krueger	Weinert
Lane	Willis
Martin	

## Nays—2

Fuller	Hardeman
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## Senate Concurrent Resolution 29

Senator Martin offered the following resolution:

S. C. R. No. 29, Requesting Board of Control and State Building Commission to restore the iron fence surrounding the Capitol Grounds.

Whereas, The building program of the State Building Commission has necessitated the removal of a good part of the iron fence surrounding the Capitol grounds; and

Whereas, It is the desire of the Legislature that as much of the fence as can be restored should be restored, but that which cannot be used should be disposed of rather than being allowed to rust and be wasted; It is, therefore

Resolved, By the Senate, with the House of Representatives concurring, that the Board of Control be requested to work with the State Building Commission toward restoring as much of the iron fence as practical to the campus of the State Capitol and that any surplus fence be sold according to law.

The resolution was read.

On motion of Senator Martin and by unanimous consent the resolution was considered immediately and was adopted.

House Concurrent Resolution 29  
on Second Reading

Senator Fuller asked unanimous consent to suspend the regular order of business and take up H. C. R. No. 29 for consideration at this time.

There was objection.

Senator Fuller then moved to suspend the regular order of business and take up H. C. R. No. 29 for consideration at this time.

The motion prevailed by the following vote:

## Yeas—21

Aikin	Moore
Baker	Parkhouse
Colson	Patman
Dies	Ratliff
Fuller	Reagan
Gonzalez	Roberts
Hazlewood	Rogers
Herring	Schwartz
Hudson	Secrest
Kazen	Willis
Lane	

## Nays—9

Calhoun	Martin
Creighton	Moffett
Crump	Owen
Hardeman	Weinert
Krueger	

**Absent**

Smith

The President laid before the Senate on its second reading:

H. C. R. No. 29, Suspending the Joint Rules of both Houses in order to take up and consider House Bill No. 67 at any time.

The resolution was read and was adopted.

**Record of Votes**

Senators Krueger, Reagan and Hardeman asked to be recorded as voting "nay" on the adoption of the above resolution.

**Recess**

On motion of Senator Hardeman the Senate at 11:56 o'clock a.m. took recess until 2:30 o'clock p.m. today.

**After Recess**

The President Pro Tempore called the Senate to order at 2:30 o'clock p.m. today.

**Message from the House**

Hall of the House of Representatives  
Austin, Texas,  
August 8, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H. C. R. No. 45, Suspending the Joint Rules so that either House may take up House Bill No. 38 at any time.

Motion to discharge the Conference Committee on House Bill No. 20 and ask the Senate for a new conference committee. Prevailed by a non-record vote. House has appointed the following Conference Committee: Ballman, Chairman; Eckhardt, Murray, Nugent, and Quilliam.

Respectfully submitted,

DOROTHY HALLMAN,  
Chief Clerk, House of Representatives

**House Concurrent Resolution 42 on Second Reading**

On motion of Senator Hudson and by unanimous consent, the regular order of business was suspended

to take up for consideration at this time on its second reading the following resolution:

H. C. R. No. 42, Suspending Joint Rules to consider H. B. No. 54 at any time.

The resolution was read and was adopted.

(President in the Chair.)

**Conference Committee on House Bill 20**

Senator Lane called from the President's table for consideration at this time, the request of the House for a Conference Committee to adjust the differences between the two Houses on H. B. No. 20 and moved that the request be granted.

The motion to grant the request prevailed.

Accordingly, the President announced the appointment of the following Conferees on the bill on the part of the Senate: Senators Lane, Reagan, Fuller, Hardeman and Creighton.

**Bills and Resolutions Signed**

The President signed in the presence of the Senate after the captions had been read, the following enrolled bills and resolutions:

S. B. No. 35, A bill to be entitled "An Act to prohibit on Sunday the sale or offer of sale at retail, or by auction or any person who shall compel, force, or oblige his employees to sell or offer for sale certain named items; providing each sale or offer to sell shall constitute a separate offense; providing this Act shall not apply to sale or sales on Sunday for charitable purposes; to provide punishment for the offense; declaring violation to be a nuisance and authorizing person to apply and obtain an injunction restraining violation of this Act; exempting persons who conscientiously believe in and uniformly observe another day of the week as Sabbath and who do not personally or through others conduct or engage in business on that day; providing for severability; and declaring an emergency."

S. B. No. 59, A bill to be entitled "An Act validating the incorporation

of cities and towns heretofore incorporated or attempted to be incorporated under the General Laws of Texas and having a population according to the Federal Census of 1960 of not more than six thousand (6,000); etc.; and declaring an emergency."

S. B. No. 64, A bill to be entitled "An Act to amend Senate Bill No. 80, Chapter 260, Acts of Fifty-seventh Legislature, Regular Session, 1961 (codified as Article 2815-3 in Vernon's Annotated Civil Statutes) by the addition thereto of a new section to be designated Section 1a defining 'consolidation' for the purposes of Senate Bill 80, supra, and its application therein; and declaring an emergency."

S. C. R. No. 26, Extending commendation and congratulations to those who established the "Ed Felder Memorial Fund" at A&M College.

S. C. R. No. 27, Granting National Lloyds permission to sue the State of Texas.

#### Conference Committee Report on House Bill 24

Senator Baker submitted the following Conference Committee Report on H. B. No. 24:

Austin, Texas,  
August 7, 1961.

Honorable Ben Ramsey, President of the Senate.

Honorable James A. Turman, Speaker of the House of Representatives.

Sirs: We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H. B. No. 24, have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BAKER  
DIES  
COLSON  
KAZEN

On the part of the Senate.

CORY  
GLUSING  
PRICE  
BUCHANAN  
BURGESS

On the part of the House.

H. B. No. 24,

#### A BILL

#### To Be Entitled

An Act to establish a State Water Pollution Control Board, and to provide for the control, prevention and abatement of pollution of the surface and underground waters of the State; repealing Articles 4444, 7621a, and 7577, Revised Civil Statutes of Texas, and Article 698b, Penal Code of Texas, effective November 1, 1962; providing a saving clause; and declaring an emergency.

#### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

##### Section 1. Statement of Policy.

It is declared to be the policy of the State of Texas to maintain purity of the waters of the State consistent with the public health and public enjoyment thereof, the propagation and protection of fish and wildlife, including birds, mammals and other terrestrial and aquatic life, the operation of existing industries, and the industrial development of the State, and to that end to require the use of all reasonable methods to prevent and control the pollution of the waters of this State.

##### Section 2. Definitions.

When used in this Act, the following words and phrases shall have the meanings ascribed to them in this Section, unless the context clearly shows a different meaning:

(a) "Person" means any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate or any other entity whatsoever.

(b) "Waters" shall be construed to be underground waters and lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico within the territorial limits of the State of Texas, and all other public bodies of surface water, natural or artificial, inland or coastal, fresh or salt, that are wholly or partially within or bordering the State or within its jurisdiction.

(c) "Waste" means sewage, industrial waste, and other wastes, or any of them, as hereinbelow defined.

(d) "Sewage" means the water-car-

ried human or animal wastes from residences, buildings, industrial establishments, cities, towns, or other places, together with such ground water infiltration and surface waters with which it may be commingled. The admixture with sewage, as above defined, of industrial wastes or other wastes, as hereinafter defined, shall also be considered "sewage" within the meaning of this Act.

(e) "Industrial waste" means any water-borne liquid, gaseous, solid, or other waste substance or a combination thereof resulting from any process of industry, manufacturing, trade, or business.

(f) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dye stuffs, acids, chemicals, salt water, and all other substances not sewage or industrial waste that may cause or tend to cause pollution of the waters of the State.

(g) "Pollution" means any discharge or deposit of waste into or adjacent to the waters of the State, or any act or omission in connection therewith, that by itself, or in conjunction with any other act or omission or acts or omissions, causes or continues to cause or will cause such waters to be unclean, noxious, odorous, impure, contaminated, altered or otherwise affected to such an extent that they are rendered harmful, detrimental or injurious to public health, safety or welfare, or to terrestrial or aquatic life, or the growth and propagation thereof, or to the use of such waters for domestic, commercial, industrial, agricultural, recreational or other lawful reasonable use.

(h) "Board" means the State Water Pollution Control Board created by this Act.

(i) "Sewage system" or "sewerage system" means pipe lines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliance appurtenant thereto, used for conducting sewage, industrial waste or other wastes to a point of ultimate disposal.

(j) "Treatment works" means any plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing,

stabilizing or disposing of sewage, industrial waste or other wastes.

(k) "Disposal system" means a system for disposing of sewage, industrial waste or other wastes, and including sewer systems and treatment works.

Section 3. Creation and Organization of the Water Pollution Control Authority; Meetings; Employees.

(a) There is hereby created and established a State Water Pollution Control Board which shall be composed of six (6) members. The Board is directed to carry out the functions and duties conferred on it by this Act. The Governor shall appoint by and with the advice and consent of the Senate of Texas, three (3) members to the State Water Pollution Control Board. One (1) shall be appointed for a two-year term, one (1) for a four-year term, and one (1) for a six-year term. Thereafter, all appointments by the Governor to fill a vacancy at the end of a term shall be for a full six-year term. The appointments by the Governor shall be made as follows: One (1) member shall represent the agriculture and soil conservation interests; one (1) member, the manufacturing industry; and one (1) member, the oil and gas producers.

(b) Vacancies occurring in any such office on the Board filled by appointment by the Governor during any term shall, with the advice and consent of the Senate, be filled by appointment by the Governor, which appointment shall extend only to the end of the unexpired term.

(c) The six (6) members of the Board shall receive no fixed salary for duties performed as members of the Board, but each member, excepting those representing the specified State agencies, shall be allowed, for each and every day in attending meetings of the Board, the sum of Twenty Dollars (\$20) including time spent in travel to and from such meetings, and all members shall be allowed traveling and other necessary expenses while in the performance of official duty, to be evidenced by vouchers approved by the Chairman of the Board, provided no member shall receive more than Two Thousand Dollars (\$2,000) annually, including expenses. The members of the Board appointed by the Governor and confirmed by the Senate shall qualify by

taking the constitutional oath of office before an officer authorized to administer an oath within this State, and, upon presentation of such oath, together with the certificate of appointment, the Secretary of State shall issue commissions to them, which shall be evidence of their authority to act as such. In addition to the three (3) members appointed by the Governor as provided herein, the Board shall also consist of the following State officers, each of whom shall be a member of said Board during the time that he is serving in such other official capacity, to wit: the Chairman of the State Board of Water Engineers, the State Commissioner of Health, and the Executive Secretary of the State Game and Fish Commission, each of whom shall perform the duties required of a member of the Board by this Act in addition to those duties required of him in said other official capacities.

(d) Each ex-officio member of the Board listed in paragraph (c) above, is authorized to delegate to a personal representative from his office the authority and duty to represent him on the Board, but by such delegation a member shall not be relieved of responsibility for the acts and decisions of his representative.

(e) Actual and necessary travel and other expenses incurred by the three (3) ex-officio members in the discharge of their official duties as members of the Board shall be paid out of any funds which are or may become available for the purposes of this Act. Employees of the Board shall receive their necessary travel expenses while traveling on the business of the Board.

(f) The Board shall elect a chairman and a vice-chairman from its members whose terms of office shall be for two (2) years commencing on February 1st of each odd-numbered year hereafter. At the first meeting of the Board, the chairman and vice-chairman shall be elected to serve until February 1, 1963. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Board and perform the other duties hereinafter prescribed. The Board shall meet at regular intervals as may be decided upon by majority vote of the Board. Special meetings may be called by the chairman upon his own motion and must be called by him upon receipt of a written re-

quest therefor signed by two (2) or more members of the Board. A majority of said Board shall constitute a quorum to transact business. The Board shall have the power to make all necessary rules for its procedure and shall have a seal, the form of which it shall prescribe.

(g) The Director of the Water Pollution Control Division of the Texas State Department of Health shall serve as Executive Secretary of the Board. He shall keep full and accurate minutes of all transactions and proceedings of said Board and perform such duties as may be required by the Board, and he shall be the custodian of all files and records of the Board. The executive secretary shall be the administrator of water pollution control activities for the Board.

(h) Technical, scientific, legal or other services shall be performed by personnel of other State agencies when requested by the Board, but the Board may employ and compensate with funds available therefor professional consultants, assistants and employees that may be necessary to carry out the provisions hereof and prescribe their powers and duties. The Board may request and shall receive the assistance of any State educational institution, experimental station, or other State agency.

(i) To carry out the provisions of this Act, any agency of this State with responsibilities under the laws of this State for water pollution control, and for which appropriations are made in the biennial appropriation act, is hereby authorized to transfer to the Board out of such appropriations such annual amounts as may be mutually agreed upon by such an agency and by the Board, subject only to the concurrence of the Governor. In the event such transfers are insufficient to finance adequately the necessary activities of the Board, then the Governor is hereby authorized to transfer to the Board from the appropriations made to the Governor's Office for deficiency grants such amounts as he may determine. It is further provided that said Board is authorized to request, solicit, contract for, receive or accept money from any Federal or State Agency, political subdivision or other legal entity to carry out the duties required of it by this Act. Such moneys as may be transferred under the provisions of this subsection, and such gifts and

grants as may be received by said Board, shall be deposited in the State Treasury in a special fund. Such moneys are hereby appropriated to said Board for any of the purposes set forth in this Act, including salaries, wages, travel expenses, equipment, and other necessary expenses.

(j) The Board shall make biennial reports in writing to the Governor and Legislature, in which shall be included statements of its activities. All data collected by the Board shall be the property of the State of Texas.

(k) Upon the application of any person and upon payment of the fees prescribed therefor in the rules and regulations of the Board, the Board shall furnish certified copies of any of its proceedings or other official acts of record, or of any paper, map or document filed in the office of the Board. Such certified copies under the hand of the chairman or the executive secretary and the seal of the Board shall be admissible in evidence in any court or administrative proceeding, in the same manner and with like effect as the original would be.

#### Section 4. Authority, Powers and Duties of the Board.

(a) The Board shall administer this Act and shall have authority to abate and prevent pollution of the waters of the State as provided for herein.

(b) The Board, after notice to the parties affected, and after a public hearing if the Board deems a hearing to be in the public interest, may issue permits for the discharge of waste into or adjacent to the waters of this State. Each such permit shall set forth the conditions upon which it is issued by the Board, including, but without limiting such conditions to, the duration of such permit, the maximum quantity of waste which may be discharged thereunder at any time and from time to time, and the quality, purity and character of waste which may be discharged thereunder. The Board shall issue a permit or a notice denying a permit to each applicant within ninety (90) days after receipt of a permit application containing such information as may be reasonably required by the Board. The permittee may be required, for good cause, from time to time, after public hearing initiated by the Board, to conform to new or additional conditions and terms imposed by the Board following such hearing. The

Board shall allow the permittee a reasonable time (not to exceed twelve [12] months) to conform to such new or additional conditions; provided, however, that upon application of the permittee, the Board, in its discretion, may grant the permittee an additional period of time (not to exceed twelve [12] months) within which to conform to such new or additional conditions.

Such permit or amended permit shall never become a vested right in the permittee, and it may be revoked for good cause shown, after public hearing initiated by the Board, in the event of the permittee's failure to comply with the condition or conditions of such permit as issued or as amended. Such hearing shall be held not less than thirty (30) days after notice to the permittee of the time, place, and purpose thereof.

(c) The Board shall adopt, prescribe, promulgate and enforce rules and regulations reasonably required to effectuate the provisions of this Act.

(d) The Board is hereby authorized to:

(1) hold hearings, receive pertinent and relevant proof from any party in interest who appears before the Board, compel the attendance of witnesses, make findings of fact and determinations, all with respect to violations or the provisions of this Act or of any orders, rules or regulations of the Board;

(2) delegate to one (1) or more of its members or to one (1) or more of its employees the authority to take testimony in any hearing called by the Board with power to administer oaths, but all orders entered shall be made by and in the name of the Board after its official action and attested to by the Executive Secretary;

(3) make, alter, or modify any orders, rules and regulations, and if any such order requires the discontinuance of the discharge of waste into any waters of the State, the order shall specify the conditions and time within which such discontinuance must be accomplished after public hearing as hereinafter provided;

(4) institute, or cause to be instituted, in courts of competent jurisdiction, legal proceedings to compel compliance with the provisions of this Act and the rules, regulations, de-

cisions, determinations and orders of the Board;

(5) conduct such investigations as it may deem advisable and necessary for the discharge of its duties under this Act;

(6) perform such other and further functions as may be necessary to carry out effectively the duties and responsibilities of the Board prescribed in this Act.

(e) It shall be the duty of the Board to:

(1) encourage voluntary cooperation by the people, municipalities, industries, associations, agriculture and representatives of other pursuits, in restoring and preserving the greatest possible utility of the waters of the State;

(2) encourage the formation and organization of cooperative groups or associations or municipalities, industrial and other users of the waters who severally or jointly are or may be the source of pollution in the same waters, the purpose of which shall be to provide a medium to discuss and formulate plans for the prevention and abatement of pollution;

(3) establish policies and procedures for the purpose of securing close cooperation in the work of the agencies of the State with respect to pollution control functions carried on by such agencies;

(4) cooperate with governments of the United States and other states, and any other agencies or groups of agencies and organizations, official or unofficial, with respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements;

(5) conduct or cause to be conducted studies and research with respect to pollution abatement or control problems, disposal systems, and treatment of sewage, industrial waste and other wastes;

(6) prepare and develop a general comprehensive plan for the abatement and prevention of pollution.

(f) The Board and its duly authorized agent and employees shall have the right to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to pollution, or the possible pollution of any waters of the State. Inspectors shall not enter private property having management in resi-

dence without notifying that management of their presence. Inspectors shall observe rules and regulations of the establishment being inspected concerning safety and fire protection.

(g) The Board, and any employee or agent thereof, when authorized by it, may examine any records or memoranda pertaining to the operation of a disposal system or treatment works.

(h) In issuing, amending, modifying, or revoking any permit to discharge waste into or adjacent to the waters of this State, or in imposing any new or additional conditions upon any permittee hereunder, the Board shall not impose upon the applicant for a permit or the permittee any condition which would require a higher standard of operation than that which is consistent with the best practice in the particular field affected under the conditions applicable to such applicant or permittee. This shall not be construed to prohibit the Board from taking any means provided by this Act to prevent the discharge of waste which is injurious to public health.

#### Section 5. Existing Discharges of Waste.

Within twelve (12) months after the date upon which this law becomes effective, every person who upon such effective date is discharging or permitting to be discharged any waste into or adjacent to the waters of this State shall apply to the Board for a permit to continue such discharge if it is his desire to so continue. Each application therefor shall furnish such information as may be reasonably required by the Board. Upon receipt of such application, the Executive Secretary of the Board is hereby authorized to, and he shall immediately, issue to such applicant a permit to continue the existing discharge covered by such application until further order of the Board. Thereafter, the permittee may be required, for good cause, from time to time, after public hearing initiated by the Board, to conform to new or additional conditions and terms imposed by the Board. The Board shall allow the permittee a reasonable time (not to exceed twelve [12] months) to conform to such new or additional conditions; provided, however, that upon application of the permittee, the Board, in its discretion, may grant the permittee an additional period of time (not to exceed twelve [12]

months) within which to conform to such new or additional conditions.

Such permit or amended permit shall never become a vested right in the permittee, and it may be revoked for good cause shown, after public hearing initiated by the Board, in the event of the permittee's failure to comply with the condition or conditions of such permit as issued or as amended. Such hearing shall be held not less than thirty (30) days after notice to the permittee of the time, place, and purpose thereof.

#### Section 6. Notices and Services of Process.

(a) Notice of any hearing shall describe briefly and in summary form the purpose of the hearing, and the time, place and date of such hearing. Where any hearing is held pursuant to application by any person, that person shall pay the cost of publishing the notices thereof hereinafter provided. In all other instances, publication costs shall be borne by the Board. Copies of each notice of a public hearing shall:

(1) be published at least twice in a newspaper regularly published or circulated in the county or counties containing such persons as the Board has reason to believe may be affected by action of the Board taken by it as a result of the hearing, the first date of publication to be not more than thirty (30) days nor less than twenty (20) days before the date fixed for such hearing, and

(2) be mailed at least twenty (20) days before the date fixed for such hearing to such persons as the Board has reason to believe may be affected by action of the Board taken by it as a result of the hearing.

(b) Service of all other processes of the Board, including notices, determinations and orders shall be served personally or by certified mail upon any natural person to whom it is addressed; upon a municipality by serving the mayor or any member of the council or the city secretary of the municipality; or upon a sewer district, water district, river or water authority, commission, private corporation or company, as the case may be, by serving an officer or local manager thereof; and upon a county by serving the county judge thereof.

#### Section 7. Court Review of Board Decision.

Any person affected by any ruling, order, decision, or other act of the Board, may, within thirty (30) days after the date on which such act is performed, or in case of a ruling, order, or decision, within thirty (30) days after the effective date thereof, file a petition in an action to review, set aside, or suspend such ruling, order, decision, or other act upon the ground or grounds that the same is invalid, arbitrary, or unreasonable. The venue in any or all such actions is hereby fixed exclusively in the District Court of Travis County, Texas. In a suit brought to review, suspend or set aside rules and regulations, orders, decisions, or other acts of the Board, the trial shall be de novo, as that term is used and understood in an appeal from a Justice of the Peace Court to the County Court, and no presumption of validity, reasonableness or presumption of any character shall be indulged in favor of the order, decision or other act that is involved, but evidence as to the validity or reasonableness thereof shall be heard and the determination in respect thereto shall be made upon facts found by the Court, as in other civil cases, and the procedure for such trials and the determination of the issues and the character of the judgment to be entered therein shall be governed solely by the rules of law, evidence and procedure prescribed for the District Courts of this State by its Constitution, Statutes and Rules of Procedure applicable to the trial of civil action. It is the intent of the Legislature that such trial shall be strictly de novo and that the decision in each case shall be made independently of any finding, express or implied, by the Board, and upon a preponderance of the evidence adduced at such trial and entirely free of the so-called "substantial evidence" rule enunciated in some cases by some appellate courts in this State in respect to orders of other administrative or quasijudicial agencies. Appeals from decisions of the District Court shall be as in other civil cases.

#### Section 8. Filing of Disposal System Plans.

For the purpose of aiding the Board in effectuating the provisions of this Act and to make available to the Board and the public, information on methods of efficient disposal of sewage, industrial wastes and other wastes, into or adjacent to the wa-

ters of the State, every person constructing or proposing to construct or materially alter the efficiency of any sewer system or sewerage system, treatment works or disposal system, shall file with the Board, at least thirty (30) days prior to beginning of construction, the plans and specifications for the construction or material alteration of the same.

#### Section 9. General Prohibition Against Pollution.

It shall hereafter be unlawful for any person to throw, drain, run or otherwise discharge into the waters of this State, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise enter such waters, any waste, unless pursuant to and in accordance with a then-existing permit, that shall cause a condition of pollution as defined in Subsection (g) of Section 2 of this Act.

#### Section 10. Enforcement.

(a) Any person who knowingly violates any provision of Section 9 of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) and each day such a violation is committed shall constitute a separate offense. Venue shall be in the county where the waters are first polluted by the person charged with the offense.

(b) Whenever it appears that any person is violating or threatening to violate any provision of Section 9 of this Act, the Board may bring suit against such person in the District Court of the county in which the violation of threat of violation first occurs, to restrain such person from continuing such violation or from carrying out the threat of violation. In any such suit, the court shall have jurisdiction to grant to the Board, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders, preliminary injunctions, temporary, preliminary or final orders. It shall be the duty of the Attorney General to represent the Board when requested to do so. The action shall have precedence over all other causes on the docket of a different nature, and either the Board of the defendant or defendants may appeal as in civil cases. The appeal shall be at once

returnable to the appellate court and shall have precedence in said appellate court over all causes of a different nature therein pending.

(c) The State Board of Water Engineers, the Texas Game and Fish Commission, the Texas State Department of Health, and the Railroad Commission of Texas are charged with the following specific duties in addition to any other duties imposed on such agencies elsewhere in this Act:

(1) It shall be the duty of the State Board of Water Engineers to investigate and ascertain those situations in which the underground waters of the State are being polluted or are threatened with pollution, and it shall report all findings to the Board together with its recommendations in regard thereto.

(2) It shall be the duty of the Texas Game and Fish Commission and the employees thereof duly authorized by such Commission to enforce the provisions of this Act insofar as any violation hereof occurs which affects aquatic life, birds, and animals.

(3) The Texas State Department of Health shall continue to perform the research, training, planning and other functions presently being conducted by it in matters concerning pollution in cooperation with, or as a State agency contributing its services to, the Board.

(4) Notwithstanding any provision of this Act, the Railroad Commission of Texas shall and the Board of Water Engineers shall continue to exercise the authority granted to them in Chapter 82, Acts of the Fifty-seventh Legislature, Regular Session, 1961, codified as Article 7621(b) Vernon's Annotated Civil Statutes; and the Railroad Commission of Texas shall continue to exercise the authority granted it in Chapter 406, Acts of the Fifty-fourth Legislature, Regular Session, 1955, codified as Article 6029(a).

#### Section 11. Exceptions.

Any pollution which is caused by an act of God, war, strike, riot or other catastrophe, shall not be held to be a violation of this Act.

#### Section 12. Private Rights to Abate Pollution Unaffected.

This Act shall not in any way affect the right of any person to pursue all legal and equitable remedies avail-

able to abate pollution and other nuisances or recover damages therefor, or both.

**Section 13. Protection of Confidential Information.**

Nothing herein contained shall require any person to disclose any classified data of the Federal Government or any confidential information relating to secret processes or economics of operation.

**Section 14. Repeal of Certain Existing Laws.**

Articles 4444, 7621a, and 7577 of the Revised Civil Statutes of Texas and Article 698b of the Penal Code of the State of Texas are hereby repealed, effective November 1, 1962. With the exception of Articles 4444, 7577 and 7621a of the Civil Statutes and Article 698b of the Penal Code, all other laws and parts of laws relating to the abatement of pollution are continued in full force and effect, and this Act is intended to supplement and not repeal such other existing laws.

This Act shall not in any way affect the power or authority of river authorities and water districts of this State with respect to the subject matter of this Act, including the authority granted to such river authorities and water districts by Title 128 of the Civil Statutes of the State of Texas, codified as Article 7466 through 8280-244, Vernon's Texas Civil Statutes, as presently existing or hereafter amended. No permit issued by the Board shall be admissible in evidence against nor raise any presumption against the exercise of such power or authority of water districts. Nothing in this Act shall be construed in any way so as to affect the private ownership of underground water.

**Section 15. The privileges and the rights accruing in any person or permittee by or as a result of this Act, including the privileges and rights of any person or permittee resulting from any act of the Board created by this Act, are conditional, in that they are allowed, granted, received, accepted, and enjoyed not only under the provisions and subject to the conditions of this Act but upon the further condition that such privileges and rights are, whether under the police power as affecting persons or otherwise, subject to the provisions of any law the Legislature may pass abolishing such privileges or rights, or re-**

**quiring or affecting their amendment, revocation, forfeiture, or cancellation, or providing for their further regulation, or any of these, including the further empowering of agencies to effect those purposes.**

**Section 16. Effective Date.**

Except as otherwise specifically provided herein, the provisions of this Act shall become effective as of November 1, 1961, and it is so enacted.

**Section 17. Severance Clause.**

If any article, section, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such invalid portion shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed the valid portions of this Act irrespective of the fact that any one or more portions be declared unconstitutional.

**Section 18. Emergency Clause.**

The fact that pollution of the surface and underground waters of this State constitutes a serious health and sanitation problem which should be corrected without delay and the further fact that there is an urgent need that some State agency be given the authority to give a prospective new industry a definite answer in regard to what it can do in disposing of its effluent create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended.

The report was read and was adopted.

**Record of Votes**

Senators Parkhouse, Hardeman and Crump asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report of H. B. No. 24.

**At Ease**

The President announced at 2:54 o'clock p.m. that the Senate would stand At Ease until 4:00 o'clock p.m. today.

**In Legislative Session**

The President Pro Tempore called the Senate to order as In Legislative Session at 4:00 o'clock p.m. today.

**Senate Concurrent Resolution 30**

Senator Aikin offered the following resolution:

S. C. R. No. 30, Suspending Joint Rules to consider H. B. No. 8 at any time.

Be it resolved, by the Senate of the State of Texas, the House of Representatives concurring, That the Joint Rules of both Houses be suspended and they are hereby suspended to allow the House and the Senate to take up House Bill No. 8 at any time.

The resolution was read.

On motion of Senator Aikin and by unanimous consent the resolution was considered immediately and was adopted.

**Motion to Place  
House Bill 67 on Third Reading**

Senator Fuller asked unanimous consent to suspend the regular order of business and take up H. B. No. 67 on third reading for consideration at this time.

There was objection.

Senator Fuller then moved to suspend the regular order of business and take up H. B. No. 67 for consideration at this time.

The motion was lost by the following vote (not receiving two-thirds vote of the Members present):

**Yeas—16**

Aikin	Parkhouse
Baker	Patman
Dies	Reagan
Fuller	Roberts
Gonzalez	Schwartz
Hazlewood	Secrest
Hudson	Smith
Kazen	Willis

**Nays—10**

Calhoun	Martin
Creighton	Moffett
Crump	Owen
Hardeman	Ratliff
Krueger	Rogers

**Absent**

Colson	Moore
Herring	Weinert
Lane	

**Senate Bill 29 with House Amendments**

Senator Herring called S. B. No. 29 from the President Pro Tempore's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and House amendments before the Senate, and the House amendments were read.

Senator Herring moved that the Senate concur in the House amendments.

The motion prevailed.

**Record of Votes**

Senators Martin, Ratliff, Owen, Moffett, Patman, Krueger and Crump asked to be recorded as voting "Nay" on the motion to concur in the House amendments to S. B. No. 29.

(President in the Chair.)

**Motion to Place  
House Bill 49 on Second Reading**

Senator Owen moved that Senate Rules 13 and 37 be suspended and that H. B. No. 49 be placed on its second reading and passage to third reading.

The motion was lost by the following vote (not receiving two-thirds vote of the Members present):

**Yeas—14**

Baker	Patman
Hazlewood	Ratliff
Herring	Reagan
Hudson	Roberts
Kazen	Rogers
Owen	Schwartz
Parkhouse	Smith

**Nays—15**

Aikin	Krueger
Calhoun	Lane
Colson	Martin
Creighton	Moffett
Crump	Moore
Dies	Secrest
Fuller	Willis
Hardeman	

**Absent**

Gonzalez	Weinert
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**Senate Resolution 81**

Senator Herring offered the following resolution:

Whereas, The Senate of the State of Texas is honored today by the presence of the Honorable Patrick H. Dougherty of Austin, Travis County, Texas; and

Whereas, For the past 6 years Judge Dougherty has been the presiding Judge of the Austin Corporation Court, where he has rendered valuable service to the City of Austin and courteous and understanding consideration of the problems of the Texas Senate; and

Whereas, Judge Dougherty was born in Burnet County on September 13, 1890, attended the University of Texas and began the practice of law in Belton, Texas; and

Whereas, Judge Dougherty served as Bell County Attorney, City Attorney of Temple, Administrative Assistant to Governors Dan Moody and Ross Sterling; and

Whereas, After serving as head of the Bond Division for Attorney General Jimmy Allred, Judge Dougherty entered the private practice of law, but later answered the call of his Country by accepting an appointment as Special U. S. Attorney in the Department of Justice; and

Whereas, Judge Dougherty served as Austin City Attorney and later was selected to be Judge of the Corporation Court of the City of Austin on August 15, 1955; now, therefore, be it

Resolved, by the Senate of the First Called Session of the 57th Legislature, That it does hereby recognize this outstanding Texan and dedicated public servant, and commend his faithful service; and be it further

Resolved, That copies of this resolution, properly endorsed, bearing the official seal of the Senate, be delivered to Judge Dougherty, his charming and gracious wife, Daisey, and to the Mayor of the City of Austin.

HERRING  
SECREST

The resolution was read and was adopted.

Senator Herring by unanimous consent presented Judge Dougherty to the Members of the Senate.

#### Bills and Resolutions Signed

The President signed in the presence of the Senate after the captions had been read, the following enrolled bills and resolutions:

H. B. No. 145, Amending Section 1 of Chapter 291, Acts of the Fifty-fourth Legislature, Regular Session, 1955, codified as Section 1 of Article 1456a, Vernon's Texas Penal Code, by redefining the term "livestock" to include certain other animals; redefining the term "slaughter" to include certain other persons; and declaring an emergency.

H. B. No. 66, A bill to be entitled "An Act to amend the subject matter of the Texas Unemployment Compensation Act, as amended, and as embraced in Section 3 providing benefits and by adding to Section 3 a new subsection to be known as (e) defining 'Wages' as used in Section 3(e), Section 4 providing benefit eligibility conditions and by adding to Section 4 a new subsection to be known as (f) providing for a one (1) week waiting period prior to the payment of benefits; etc.; and declaring an emergency."

H. B. No. 143, A bill to be entitled "An Act relating to charges, allowances, etc., of common carriers, etc., and declaring an emergency."

H. B. No. 165, A bill to be entitled "An Act establishing a Juvenile Board for certain counties, etc., and declaring an emergency."

H. C. R. No. 18, Requesting State Building Commission to study feasibility of constructing quarters for State Departments in case of nuclear attack.

H. C. R. No. 23, Granting Tarrant Distributing Company and estate of Bart K. Smith permission to sue the State of Texas.

H. C. R. No. 29, Suspending Joint Rules to consider H. B. No. 67 at any time.

H. C. R. No. 35, Suspending Joint Rules to consider H. B. No. 5 at any time.

H. C. R. No. 43, Suspending Joint Rules to consider H. B. No. 49 and H. B. No. 156 at any time.

#### At Ease

The President announced at 4:24 o'clock p.m. that the Senate would stand At Ease until 5:00 o'clock p.m.

#### In Legislative Session

The President called the Senate

to order as In Legislative Session at 5:00 o'clock p.m. today.

#### Message from the House

Hall of the House of Representatives  
Austin, Texas,  
August 8, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

The House has adopted the Conference Committee Report on House Bill No. 24 by a non-record vote.

The House refused to concur in Senate amendments to House Bill 37 and has requested the appointment of a Conference Committee to consider the differences between the two Houses.

House has appointed the following conferees:

Townsend, Chairman; Crain, Fletcher, Nugent, Petty.

Motion to reconsider vote by which Senate amendments were adopted, prevailed by non-record vote.

The House has concurred in Senate amendments to House Bill No. 50 by vote of 127 ayes.

S. C. R. No. 29, Requesting the State Board of Control to work with the State Building Commission to restore as much of the iron fence as practical to the campus of the State Capitol, and that any surplus fence be sold according to law.

S. C. R. No. 21, Memorializing Congress for the passage of the Social Security Amendments of 1961.

Respectfully submitted,

DOROTHY HALLMAN,

Chief Clerk, House of Representatives

#### Conference Committee on House Bill 37

Senator Crump called from the President's table for consideration at this time, the request of the House for a Conference Committee to adjust the differences between the two Houses on H. B. No. 37 and moved that the request be granted.

The motion to grant the request prevailed.

Accordingly, the President announced the appointment of the following Conferees on the bill on the part of the Senate: Senators Crump, Hardeman, Moore, Secrest and Kazen.

#### Motion to Place Senate Concurrent Resolution 28 on Second Reading

Senator Herring moved to suspend the regular order of business and take up S. C. R. No. 28 for consideration at this time.

The motion was lost by the following vote (not receiving two-thirds vote of the Members present).

#### Yeas—18

Aikin	Moffett
Baker	Moore
Colson	Owen
Creighton	Patman
Crump	Ratliff
Dies	Roberts
Herring	Rogers
Kazen	Secrest
Martin	Willis

#### Nays—11

Calhoun	Lane
Fuller	Parkhouse
Hardeman	Reagan
Hazlewood	Smith
Hudson	Weinert
Krueger	

#### Present—Not Voting

Gonzalez

#### Absent

Schwartz

#### At Ease

On motion of Senator Weinert and by unanimous consent the Senate at 6:45 o'clock p.m. agreed to stand At Ease until 9:00 o'clock p.m. today.

#### In Legislative Session

The President called the Senate to order as In Legislative Session at 9:00 o'clock p.m.

#### Bills and Resolutions Signed

The President signed in the presence of the Senate after captions had been read, the following enrolled bills and resolutions:

H. C. R. No. 40, Suspending the

Joint Rules to consider H. B. No. 144 at any time.

H. C. R. No. 42, Suspending Joint Rules to consider H. B. No. 54 at any time.

H. C. R. No. 44, Suspending Joint Rules to consider H. B. No. 37 at any time.

H. B. No. 5, A Bill to be Entitled, "An Act providing for the making of reports by persons holding personal property subject to escheat, defining terms, etc., and declaring an emergency."

H. B. No. 130, A bill to be entitled "An Act establishing a Juvenile Board for Coleman County; etc., and declaring an emergency."

H. B. No. 156, Validating time and scrip warrants issued by certain counties.

H. B. No. 50, Amending Chapter 400, page 1060, Acts of the Fifty-fourth Legislature, 1955, codified as Article 8280-177, Revised Civil Statutes of Texas, by amending Section 2 thereof designating the boundaries of the "City of McAllen Water and Sewer Authority"; amending Section 3(a) thereof to change the requirement for the bonds of Directors; etc.; and declaring an emergency.

H. B. No. 56, A bill to be entitled "An Act amending Article 2919, Revised Civil Statutes of Texas, 1925, to provide that the trustees of any school district shall, upon petition of five per cent (5%) of the qualified voters of the school district, call an election to determine whether or not the district shall establish and maintain a kindergarten; and declaring an emergency."

H. B. No. 144, A Bill to be entitled "An Act providing a fine for certain sales, etc., of diseased cattle, etc., and declaring an emergency.

H. B. No. 68, A Bill to be entitled "An Act pertaining to the support of children who require custodial care, etc., and declaring an emergency.

H. B. No. 71, A Bill to be entitled "An Act relating to Water Supply or Sewer Service Corporations, etc., and declaring an emergency."

### Conference Committee Report on House Bill 37

Senator Crump submitted the following Conference Committee Report on H. B. No. 37:

Austin, Texas,  
August 8, 1961.

Hon. Ben Ramsey, President of the Senate.

Hon. James A. Turman, Speaker of the House of Representatives.

Sirs: We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H. B. No. 37, have met and had same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

CRUMP  
MOORE  
KAZEN

On the part of the Senate  
TOWNSEND  
PETTY  
FLETCHER

One the part of the House

H. B. No. 37:

### A BILL

To Be Entitled

An Act amending Section 9 of Chapter 50, Acts of the Fifty-fifth Legislature, Regular Session, 1957, as amended, by excepting Llano County from certain provisions of the Section; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Section 9 of Chapter 50, Acts of the 55th Legislature, Regular Session, 1957, is amended to read as follows:

"Section 9. Orders, rules and regulations adopted by said Commission shall become effective fifteen (15) days after their adoption, except in case of emergency as provided in this Act, and shall continue in full force and effect until they shall expire by their own terms, or are revoked or amended by said Commission, or except in case of disapproval by the Commissioners Court of the County, except Llano County, Mason County, and Blanco County, in which the rule,

regulation, or order is to be in effect. The Commissioners Court in each County, except Llano County, Mason County, and Blanco County affected by the rule, regulation, or order by the Commissioner shall approve or disapprove the Commission's rule, regulation, or order at its next regular meeting occurring more than five (5) days after the said rule, regulation, or order is promulgated. If approved, the rule, regulation, or order becomes effective immediately in accordance with the terms of this Act. If disapproved, no public hearing on a similar proposal for the County in which the Commissioners Court so disapproved said rule, regulation, or order may be held for a period of six (6) months, unless a majority of said Commissioners Court certifies to the Commission that there has been some material change in the surrounding circumstances which necessitates the holding of a public hearing within the six-month period."

Section 2. The importance of this legislation to the maintenance of a balanced game supply in Llano County and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was adopted by the following vote:

## Yeas—26

Aikin	Krueger
Baker	Martin
Calhoun	Moffett
Colson	Parkhouse
Creighton	Patman
Crump	Ratliff
Dies	Reagan
Fuller	Roberts
Gonzalez	Rogers
Hazlewood	Schwartz
Herring	Secrest
Hudson	Smith
Kazen	Willis

## Nays—1

Hardeman

## Absent

Lane	Owen
Moore	Weinert

## Message from the House

Hall of the House of Representatives  
Austin, Texas,  
August 8, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H. C. R. No. 46, Granting permission to suspend the Joint Rule to take up and consider House Bill No. 52.

The House has adopted the Conference Committee Report on House Bill No. 37 by a vote of 138 ayes, 0 noes.

S. C. R. No. 30, Suspending Joint Rules to permit consideration of House Bill No. 8.

H. C. R. No. 47, Suspending the Joint Rules of the House of Representatives and granting the Senate permission to consider House Bill No. 11 at any time.

The House has adopted the Conference Committee Report on House Bill No. 20 by a vote of 83 ayes, 62 noes.

Motion to reconsider vote by which report was adopted, prevailed.

The House has adopted the Conference Committee Report on House Bill No. 20 by a vote of 100 ayes, 45 noes.

The House has adopted the Conference Committee Report on Senate Bill No. 1 by a vote of 73 ayes, 72 noes.

The House has adopted the Conference Committee Report on Senate Bill 10 by a non-record vote.

The House has adopted the Conference Committee Report on House Bill No. 15 by a vote of 187 ayes, 10 noes.

Respectfully submitted,

DOROTHY HALLMAN,  
Chief Clerk, House of Representatives

### House Concurrent Resolution 46 on Second Reading

On motion of Senator Roberts and by unanimous consent, the regular order of business was suspended to take up for consideration at this

time on its second reading the following resolution:

H. C. R. No. 46, Suspending Joint Rules to consider H. B. No. 52 at any time.

The resolution was read and was adopted.

#### House Bill 52 on Second Reading

Senator Roberts moved that Senate Rules 13, 32 and 38 and the Constitutional Rule requiring bills to be read on three several days be suspended and that H. B. No. 52 be placed on its second reading and passage to third reading and on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—28

Aikin	Krueger
Baker	Martin
Calhoun	Moffett
Colson	Parkhouse
Creighton	Patman
Crump	Ratliff
Dies	Reagan
Fuller	Roberts
Gonzalez	Rogers
Hardeman	Schwartz
Hazlewood	Secrest
Herring	Smith
Hudson	Weinert
Kazen	Willis

Absent

Lane	Owen
Moore	

The President then laid before the Senate on its second reading and passage to third reading the following bill:

H. B. No. 52, A bill to be entitled "An Act amending Subsection (a) of Section 15 of Chapter 179, Acts of the Fifty-sixth Legislature, Regular Session, 1959, to provide for enforcement of the Water Safety Act by game wardens on Lake Texoma, Lake Texarkana, and Garza-Little Elm Lake, in addition to the enforcement by peace officers of this State and its political subdivisions; and declaring an emergency."

The bill was read second time and was passed to third reading.

#### House Bill 52 on Third Reading

Senator Roberts moved that the

Constitutional Rule and Senate Rule 32 requiring bills to be read on three several days be suspended and that H. B. No. 52 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—28

Aikin	Krueger
Baker	Lane
Calhoun	Moffett
Colson	Parkhouse
Creighton	Patman
Crump	Ratliff
Dies	Reagan
Fuller	Roberts
Gonzalez	Rogers
Hardeman	Schwartz
Hazlewood	Secrest
Herring	Smith
Hudson	Weinert
Kazen	Willis

Nays—1

Martin

Absent

Moore	Owen
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The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote:

Yeas—28

Aikin	Krueger
Baker	Lane
Calhoun	Moffett
Colson	Parkhouse
Creighton	Patman
Crump	Ratliff
Dies	Reagan
Fuller	Roberts
Gonzalez	Rogers
Hardeman	Schwartz
Hazlewood	Secrest
Herring	Smith
Hudson	Weinert
Kazen	Willis

Nays—1

Martin

Absent

Moore	Owen
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#### Bill and Resolutions Signed

The President signed in the pres-

ence of the Senate after the caption had been read, the following enrolled bill and resolutions:

S. B. No. 29, A bill to be entitled "An Act directing payment of certain miscellaneous claims and judgments out of the sum appropriated for that purpose in the General Appropriation Bill; making an appropriation for and directing payment of certain miscellaneous claims and judgments out of other funds designated therein; requiring approval of claims in the manner specified in the Act before payment is made; and declaring an emergency."

S. C. R. No. 21, Memorializing Congress relative to "Social Security amendments of 1961" and recipients of old age assistance.

S. C. R. No. 29, Requesting the State Board of Control to work with the State Building Commission to restore as much of the iron fence as practical to the campus of the State Capitol and that any surplus fence be sold according to law.

(Senator Martin in Chair.)

#### Conference Committee Report on Senate Bill 10

Senator Owen submitted the following Conference Committee Report on S. B. No. 10:

Austin, Texas,  
August 8, 1961.

Hon. Ben Ramsey, President of the Senate.

Hon. James A. Turman, Speaker of the House of Representatives.

Sirs: We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S. B. No. 10, have met and had same under consideration, and beg to report it back with the recommendation that it do pass in the form attached.

OWEN  
PARKHOUSE  
ROBERTS  
DIES  
HARDEMAN  
McGREGOR of  
El Paso  
KENNARD  
KORIOTH  
NUGENT  
ROSAS

On the part of the Senate.

On the part of the House.

S. B. No. 10:

#### A BILL

#### To Be Entitled

An Act creating El Paso County Water Authority, a Conservation Authority under Article XVI, Section 59, of the Constitution comprising certain territory contained within El Paso County, Texas, for the purpose of providing a source of water supply for municipal, domestic and industrial use and processing, transporting, and distributing the same, providing drainage and sanitary sewers and facilities; providing for a Board of Directors for the government of said Authority; authorizing the Authority to do all things necessary to make available for municipal, domestic, and industrial uses, the water from underground and other sources, and water it may obtain by purchase; authorizing the issuance of bonds and providing for payment and security thereof; making applicable to certain General Laws relating to water control and improvement districts; prescribing the other powers of the Authority; enacting other provisions relating to the subject; and declaring an emergency.

#### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. By virtue of Article XVI, Section 59, of the Texas Constitution, there is hereby created a Conservation and Reclamation Authority to be known as "El Paso County Water Authority" (hereinafter called "Authority") which shall be a governmental agency and body politic and corporate.

Sec. 2. The Authority shall contain the following described territory:

#### Land in El Paso County

The following Sections in Block 77—Township 3: Section Nos. 6, 8, 14, 16, 18, 24, 26, 32, 38, 40, 42, 44, 46, and 48.

The following Sections in Block 78—Township 3: Section Nos. 28, 30, 32, 36, 37, 38, 42, and 48.

The following Section in C. D. Stuart Survey: Section No. 322.

The following Section in W. J. Rand Survey: Section No. 325.

The following Sections in Block 77—Township 3—T & P: Section Nos. 5, 7, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, and 47.

The following Sections in Block 78—Township 3—T & P: Section Nos. 21, 25, 27, 29, 31, 33, 35, 39, 41, 43, 45, and 47.

The following Sections in Block 78—Township 4—T & P: Section Nos. 3 and 5.

The following Sections in Block 79—Township 3—T & P: Section Nos. 3, 11, 15, 17, 19, and 21.

Leigh Clark Survey 291.

Leigh Clark Survey 296.

Public School Lands—Block 5: The land lying South of Highway 62 in the following Sections—Section Nos. 19, 21, 22, 23, and 24.

Public School Lands—Block 6: The land lying South of Highway 62 in Section No. 24.

The following Sections in Public School Lands, Block 7: Section Nos. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, and 23.

The following Sections in Block 77—Township 3: Section Nos. 2, 4, 10, and 12.

The following Sections in Block 77—Township 3: Section Nos. 1, 3, 9, and 11.

It is hereby found that all of the land thus included in said Authority will be benefited by the improvement to be acquired and constructed by said Authority.

Sec. 3. (a) All powers of the Authority shall be exercised by a board of five (5) directors. Each director shall serve for his term of office as herein provided, and thereafter until his successor shall be appointed and qualified. No person shall be a director unless he resides in the State of Texas. Such directors shall subscribe to the Constitutional oath of office, and each shall give bond in the amount of Five Thousand (\$5,000.00) Dollars for the faithful performance of his duties, the cost of which shall be paid by the Authority. A majority shall constitute a quorum.

(b) Immediately after this Act becomes effective, the County Judge of El Paso County shall appoint five (5) directors. All five (5) directors shall be appointed for a term which shall expire the first Tuesday in January, 1963.

(c) On the second Tuesday in January, 1963, an election shall be held in the District in like manner as prescribed in the provisions of Section 37 of Chapter 25, Acts of the 39th Legislature, as amended by Section 6 of Chapter 107 of the First Called Session of the 40th Legislature (car-

ried forward in Article 7880-37 of Vernon's Civil Statutes) and laws amendatory thereof and supplemental thereto. At such election five (5) directors shall be elected. As shall be determined by lot three (3) of the directors chosen shall serve for a term of one (1) year, and two (2) of the directors shall serve for a term of two (2) years. In the manner prescribed in such statute, on the second Tuesday in January, 1964, three (3) directors shall be elected and thereafter on the second Tuesday of January of each year in the manner prescribed in such law, two (2) directors or three (3) directors, as the case may be, shall be elected. Directors so elected shall serve for their terms of two (2) years.

(d) Vacancies occurring in the Board of Directors shall be filled for the unexpired term by the County Judge of El Paso County.

(e) Each director shall receive a fee of not to exceed Ten (\$10) Dollars for attending each meeting of the Board. Each director shall also be entitled to receive not to exceed Ten (\$10) Dollars per day devoted to the business of the Authority and to reimbursement for actual expenses incurred in attending to Authority business provided that such services and expense are expressly approved by the Board.

Sec. 4. The Board of Directors shall elect from its number a president and a vice-president of the Authority, and such other officers as in the judgment of the Board are necessary. The president shall be the chief executive officer of the Authority and the presiding officer of the Board, and shall have the same right to vote as any other director. The vice-president shall perform all duties and exercise all powers conferred by this Act upon the president when the president is absent or fails or declines to act. The Board shall also appoint a secretary and a treasurer who may or may not be members of the Board, and it may combine those offices. The treasurer shall give bond in such amount as may be required by the Board of Directors. The condition of such bond shall be that he will faithfully account for all money which shall come into his custody as treasurer of the Authority. The Board shall appoint all necessary engineers, attorneys and other employees. The Board shall adopt a seal for the Authority.

Sec. 5. The Authority is hereby em-

powered to acquire by purchase, lease or otherwise, underground water supplies and water wells, and to drill water wells. The Authority is also empowered to construct or otherwise acquire and operate, within or without the Authority, all works, plants, pipelines and other facilities necessary or useful for the purpose of processing and transporting such water, and distributing it for municipal, domestic and industrial purposes, and to purchase water, water supply, or water storage space. The Authority is also empowered to acquire or construct a sanitary sewer system, including treatment and disposal facilities, and may make a contract with any city or private corporation for treatment or disposal of sewage or both treatment and disposal. The Authority also is empowered to construct, maintain and operate within and without the Authority facilities for the drainage of water from the Authority. The Authority is authorized to sell any real or personal property not needed for the exercise of its powers hereunder.

Sec. 6. (a) For the purpose of carrying out any power or authority conferred by this Act, the Authority shall have the right to acquire and hold land, improvements, underground water rights or other facilities, by purchase, lease or otherwise within the Authority, but not by condemnation outside of said Authority; provided however, the Authority shall have the right to acquire easements for sewer facilities, water pipelines or conveyors of water by condemnation in the manner provided by Title 52, Revised Civil Statutes, as amended, relating to eminent domain, and as hereby limited to easements. Provided however, notwithstanding any other provision of this Act, the Authority shall not have the right to condemn, acquire or hold any land, underground water rights or easements within the city limits of any incorporated city, town, or village, or within a five-mile radius thereof, or within a five-mile radius of any water well under the control of any such city, town, or village, or within a five-mile radius of any land reserved by any such city, town, or village for the production of water. The amount of and character of interest in land and easements thus to be acquired shall be determined by the Board of Directors. The Authority shall have the same power as is conferred upon water control and improvement dis-

tricts by Section 49 of Chapter 25, Acts of the Thirty-ninth Legislature, with reference to making surveys and attending to other business of the Authority. Provided further, if such cities, towns, or villages shall hereafter expand their limits or acquire wells or land reserved for water within five miles of any property of the Authority, which property was acquired by the Authority not in violation of this Act, and which property is then actually developed or being developed or in use for the production of water, the Authority may continue to hold and use such property. Anything to the contrary notwithstanding, the Authority shall not be empowered or authorized to condemn surface or underground water rights within or without the limits of the Authority.

(b) In the event that the Authority, in the exercise of the power of relocation, or any other power granted hereunder, makes necessary the relocation, raising, rerouting or changing the grade of, or altering the construction of any highway, railroad, electric transmission line, telephone or telegraph properties and facilities, or pipeline, all such necessary relocation, raising, rerouting, changing of grade or alteration of construction shall be accomplished at the sole expense of the Authority.

Sec. 7. Any construction contract or contract for the purchase of material, equipment or supplies requiring an expenditure of more than Twenty-five Thousand (\$25,000.00) Dollars shall be made to the lowest responsible bidder after publication of a notice to bidders once each week for two (2) weeks before awarding the contract. Such notice shall be sufficient if it states the time and place when and where the bids will be opened, the general nature of the work to be done, or the material, equipment or supplies to be purchased, and states where and the terms upon which copies of the plans and specifications may be obtained. The publication shall be in a newspaper published in El Paso County and designated by the Board of Directors.

Section 8. (a) For the purpose of providing a source of water supply for cities and other users for municipal, domestic and industrial purposes, and for the purpose of acquiring or constructing drainage facilities and a sanitary sewage system, including sewage treatment and disposal facil-

ities, and for the purpose of extending, repairing and improving its water supply, transportation treatment and distribution properties and its drainage and sewer properties, as authorized by this Act, and for the purpose of carrying out any other power or authority conferred by this Act, the Authority is empowered to issue its negotiable bonds to be payable from such revenues of the Authority as are pledged by resolution of the Board of Directors.

(b) Such bonds shall be authorized by resolution of the Board of Directors and shall be issued in the name of the Authority, signed by the president or vice-president, attested by the secretary, or their facsimile signatures may be printed or lithographed thereon, and have the seal of the Authority impressed thereon, or a facsimile seal may be printed or lithographed thereon. They shall mature serially or otherwise in not to exceed forty (40) years and they may be sold at a price and under terms determined by the Board of Directors to be the most advantageous reasonably obtainable, provided that the interest cost to the Authority, calculated by use of standard bond interest tables currently in use by insurance companies and investment houses does not exceed six per cent (6%) per annum, and within the discretion of the Board, may be made callable prior to maturity at such times and prices as may be prescribed in the resolution authorizing the bonds, and may be registerable as to principal or as to both principal and interest.

(c) Bonds may be issued in more than one (1) series and from time to time as required for carrying out the purposes of this Act.

(d) The bonds may be secured by a pledge of all or part of the net revenues of the Authority, or by the net revenues of any one (1) or more contracts theretofore or thereafter made or other revenues specified by resolution of the Board of Directors or a trust indenture authorized by said Board. Any such pledge may reserve the right, under conditions therein specified, to issue additional bonds which will be on a parity with or subordinate to the bonds then being issued. The term "net revenues" as used in this Section shall mean the gross revenues of the Authority after deduction of the amount necessary to pay the cost of maintaining and oper-

ating the Authority and its properties.

(e) When revenue bonds are issued, it shall be the duty of the Board of Directors to fix, and from time to time to revise, the rates of compensation for water sold and services rendered by the Authority which will be sufficient to pay the expense of operating and maintaining the facilities of the Authority and to pay the bonds as they mature and the interest as it accrues and to maintain the reserve and other funds as provided in the resolution authorizing the bonds.

(f) From the proceeds from the sale of the bonds, the Authority may set aside an amount for the payment of interest expected to accrue during construction and a reserve interest and sinking fund, and such provision may be made in the resolution authorizing the bonds or trust indenture.

(g) In the event of a default or a threatened default in the payment of principal of or interest on bonds, any court of competent jurisdiction may, upon petition of holders of outstanding bonds, appoint a receiver with authority to collect and receive all income of the Authority, employ and discharge agents and employees of the Authority, take charge of funds on hand and manage the proprietary affairs of the Authority without consent of or hindrance by the Directors. Such receiver may also be authorized to sell or make contracts for the sale of water and contacts for sewer service and sewage disposal, or renew such contracts with the approval of the court appointing him. The court may vest the receiver with such other powers and duties as the court may find necessary for the protection of the holders of the bonds. It is provided, however, that the resolution authorizing the issuance of the bonds or the trust indenture securing their payment shall specify the minimum per cent of outstanding bonds which must be held by the holders seeking the appointment of a receiver, and may otherwise qualify the right of holders to institute litigation which might affect the Authority's property or funds.

Section 9. The Authority is authorized to issue refunding bonds for the purpose of refunding any outstanding bonds authorized by this Act and interest thereon. Such refunding bonds may be issued to refund more than one (1) series of outstanding bonds and combine the pledges and

mortgage liens, if any, for the outstanding bonds for the security of refunding bonds, and the refunding bonds may be secured by other or additional revenues. The provisions of this law with reference to the issuance of other bonds and their approval by the Attorney General and the remedies of the holders shall be applicable to refunding bonds. Refunding bonds shall be registered by the Comptroller upon surrender and cancellation of the bonds to be refunded, but in lieu thereof, the resolution authorizing their issuance may provide that they shall be sold and the proceeds thereof deposited in a bank where the original bonds are payable, in which case the refunding bonds may be issued in an amount sufficient to pay the interest on the original bonds to their option date or maturity date, and the Comptroller shall register them without concurrent surrender and cancellation of the original bonds.

Section 10. Any bonds (including refunding bonds) authorized by this law may be additionally secured by a mortgage lien upon physical properties of the Authority and all franchises, easements, water rights and appropriation permits, leases and contracts and all rights appurtenant to such properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties and all other powers and authority for the further security of the bonds. The trust indenture may contain any provisions prescribed by the Board of Directors for the security of the bonds and the preservation of the trust estate, and may make provision for amendment or modification thereof and the issuance of bonds to replace lost or mutilated bonds. Any purchaser under a sale under such trust indenture shall be the owner of the properties and facilities so purchased and shall have the right to maintain and operate the same.

Sec. 11. After any bonds are authorized by the Authority, such bonds and the record relating to their issuance shall be submitted to the Attorney General for his examination as to the validity thereof. If the Attorney General finds that such bonds have been authorized in accordance with the Constitution and Laws of the State of Texas he shall approve them and the bonds then shall be registered by the Comptroller of Pub-

lic Accounts. Thereafter, the bonds shall be valid and binding and shall be incontestable for any cause.

Sec. 12. Proceeds from the sale of bonds may be invested in direct obligations of the United States Government, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Federal Home Loan Banks or Banks for Cooperatives.

Sec. 13. The Authority is authorized to enter into contracts with cities and others for supplying water to them under conditions specified in the resolution authorizing the bonds or the trust indenture securing the bonds. Any such contract may be upon such terms and for such time as the parties may agree, and it may provide that it shall continue in effect until bonds specified therein and refunding bonds issued in lieu of such bonds are paid.

Sec. 14. (a) The Board of Directors shall designate one or more banks within El Paso County to serve as depository for the funds of the Authority. All funds of the Authority shall be deposited in such Depository Bank or banks except that funds pledged to pay bonds may be deposited with the trustee bank named in the trust agreement, and except that funds shall be remitted to the bank of payment for the payment of principal of and interest on bonds. To the extent that funds in the Depository banks and the trustee bank are not insured by the F.D.I.C. they shall be secured in the manner provided by law for the security of county funds.

(b) Before designating a depository bank or banks, the Board of Directors shall issue a notice stating the time and place when and where the Board will meet for such purpose and inviting the banks in the Authority to submit applications to be designated depositories. The term of service for depositories shall be prescribed by the Board. Such notice shall be published one (1) time in a newspaper published in the Authority or in El Paso and specified by the Board.

(c) At the time mentioned in the notice, the Board shall consider the applications and the management and condition of the banks filing them, and shall designate as depositories the bank or banks which offer the most favorable terms and conditions for the handling of the funds of the Authority and which the Board finds

have proper management and are in condition to warrant handling of Authority funds. Membership on the Board of Directors of an officer or director of a bank shall not disqualify such bank from being designated as depository.

(d) If no applications are received by the time stated in the notice or if no such application is accepted, the Board shall designate some bank or banks within or without Authority upon such terms and conditions as it may find advantageous to the Authority.

Sec. 15. All bonds of the Authority shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their par value, when accompanied by all unmatured coupons appurtenant thereto.

Sec. 16. The accomplishment of the purposes stated in this Act being for the benefit of the people of this state and for the improvement of their properties and industries, the Authority in carrying out the purposes of this Act will be performing an essential public function under the Constitution and shall not be required to pay any tax or assessment on the project or any part thereof, and the bonds issued hereunder, and their transfer and the income therefrom, including the profits made on the sale thereof, shall at all times be free from taxation within this state.

Sec. 17. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

Sec. 18. The fact, that additional

sources of water are immediately and urgently needed in the Authority hereby established, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said rule is hereby suspended; and that this Act shall take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was adopted by the following vote:

#### Yeas—31

Aikin	Martin
Baker	Moffett
Calhoun	Moore
Colson	Owen
Creighton	Parkhouse
Crump	Patman
Dies	Ratliff
Fuller	Reagan
Gonzalez	Roberts
Hardeman	Rogers
Hazlewood	Schwartz
Herring	Secrest
Hudson	Smith
Kazen	Weinert
Krueger	Willis
Lane	

(Senator Kazen in the Chair)

#### At Ease

On motion of Senator Weinert and by unanimous consent the Senate at 10:00 o'clock p.m. agreed to stand At Ease until the end of the Caucus Meeting.

#### In Legislative Session

The President called the Senate to order as In Legislative Session at 10:46 o'clock p.m. today.

(Senator Martin in the Chair.)

#### Conference Committee Report on House Bill 15

Senator Martin submitted the following Conference Committee Report on H. B. No. 15:

Austin, Texas,  
August 8, 1961.

Hon. Ben Ramsey, President of the Senate.

Hon. James A. Turman, Speaker of the House of Representatives.

Sirs: We, your Conference Com-

mittee, appointed to adjust the differences between the Senate and the House of Representatives on H. B. No. 15, have met and had same under consideration, and beg to report it back with the recommendation that it do pass in the form attached.

MARTIN  
DIES  
CALHOUN  
RATLIFF

On the part of the Senate

COTTEN  
DEWEY  
TREVINO  
BALLMAN

On the part of the House

H. B. No. 15:

#### A BILL

#### To Be Entitled

An Act transferring from net revenue collected pursuant to Articles 702 and 706 of Chapter 7 of H. B. No. 11, Acts of the Fifty-sixth Legislature, Third Called Session, 1959, Chapter 1 (cigarette tax), the sum of \$200,000 to the Legislative Expense Fund; appropriating said sum for the expenses of the Legislature; and declaring an emergency.

#### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. From net revenues collected pursuant to the provisions of Article 702 and Article 706 of Chapter 7 of House Bill No. 11, Acts of the Fifty-sixth Legislature, Third Called Session, 1959, Chapter 1 (cigarette tax), there shall be transferred and deposited to the Legislative Expense Fund created by Chapter 1, (H. B. No. 1) Acts 1961, Fifty-seventh Legislature, Regular Session the sum of Two Hundred Thousand Dollars (\$200,000). The Comptroller of Public Accounts is hereby authorized and directed to make allocations and deposit revenues derived from the cigarette tax levied by the provisions of said Chapter 7 of House Bill No. 11, Acts of the Fifty-sixth Legislature, Third Called Session, 1959, Chapter 1, to the Legislative Expense Fund until such allocations and deposits equal the sum of Two hundred Thousand Dollars (\$200,000); thereafter, the allocation of such revenue shall be as provided in House Bill No. 11, Acts of the Fifty-

sixth Legislature, Third Called Session 1959, Chapter 1.

Sec. 2. The sum of Two Hundred Thousand Dollars (\$200,000) transferred to and deposited in the Legislative Expense Fund by Section 1 of this Act is hereby appropriated for the purpose authorized by Section 24 of Article III of the Constitution of Texas, and for such other expenses of the Legislature as are authorized by Chapter 1, (H. B. No. 1) Acts 1961, Fifty-seventh Legislature, Regular Session. Expenditures from the appropriation herein made shall be subject to the provisions and procedures set forth in said Chapter 1, Acts 1961, and such other enactments of the Legislature as may apply.

Sec. 3. The fact that the initial appropriation for the expenses of the 57th Legislature was made without fore-knowledge of a called session of that Legislature, and the fact that such called session has depleted the initial appropriation and requires an additional appropriation for legislative expenses through August 31, 1961, create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended; and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

The report was read and was adopted by the following vote:

#### Yeas—26

Aikin	Martin
Baker	Moore
Calhoun	Owen
Colson	Parkhouse
Creighton	Patman
Crump	Ratliff
Dies	Reagan
Fuller	Roberts
Hazlewood	Rogers
Herring	Schwartz
Hudson	Secrest
Kazen	Smith
Krueger	Willis

#### Nays—1

Moffett

#### Absent

Gonzalez	Lane
Hardeman	Weinert

**Senate Resolution 86**

Senator Aikin offered the following resolution:

Austin, Texas,  
August 8, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: At a caucus held on August 8, 1961, and attended by 28 members of the Senate, the following recommendations were made, to-wit:

Be It Resolved by the Senate, That the following named employees be retained for a number of days at the per diem salary specified in each case to perform such duties as may be required of them in connection with the business of the State, viz.:

The Secretary of the Senate shall be retained during the interval between adjournment of this session and the convening of the next session of the Legislature, for which services he shall receive the same per diem (\$550.00 per month) which he now receives, and in addition thereto he and the Lieutenant Governor shall be furnished postage, telegraph, telephone, express and all other expenses incident to the office.

The Assistant Secretary of the Senate shall be employed by the Secretary of the Senate and shall be retained during the interval between adjournment of this session and the convening of the next session of the Legislature with a salary of \$14.00 per day.

The Lieutenant Governor may employ such employees as are necessary for the operation of his office from the closing of this session and until the convening of the next session and shall also employ some suitable person who shall index and annotate the Legislative Manual for the Senate of the Fifty-seventh Legislature and provide sufficient copies thereof to be paid for out of the Contingent Expense Fund for the use of the members of the Senate.

The Warrant Clerk shall be retained for a period of 28 days at a salary of \$14.00 per day.

The Calendar Clerk shall be retained for 22 days at a salary of \$14.00 per day.

The Journal Clerk, Mrs. Minnie Meier, shall be retained for a period of 360 days at \$15.00 per day, and Mrs. Olga Schneider, Assistant Journal Clerk, shall be retained for 360 days at \$13 per day.

The Sergeant-at-Arms, John Dorman, shall be retained for the ad interim at the same pay he now receives (\$16.50 per day, plus \$50.00 per month), and 2 assistants for 15 days at \$12.00 per day. The Lieutenant Governor may employ or retain at \$7.00 per day as many porters as may be necessary, and a head porter at \$12.00 per day.

The Enrolling and Engrossing Clerk shall be retained 21 days at \$19.00 per day, and 5 assistants to assist her shall be retained for 21 days at \$11.00 per day, and 1 assistant for 21 days at \$14.00 per day.

The private secretary of each Senator may be retained for 14 days at \$14 per day to perform such duties as may be required of them.

The Postmistress shall be retained 6 days at \$14.00 per day, after which time the Secretary of the Senate shall attend to all mail of the Senators.

The Mailing Clerk of the Senate shall be retained for 15 days at \$14.00 per day and 1 assistant for 15 days at \$13.00 per day, and 1 assistant for 5 days at \$11.00 per day and one assistant at \$12.00 per day for 5 days.

The Chairman of the Senate Committee on Contingent Expenses is hereby authorized and directed to cause the Senate Chamber to be placed in order and an inventory made of all furniture and fixtures in the Senate Chamber and in the private offices of the members, as well as of the supplies and equipment on hand in the room of the Sergeant-at-Arms, and close his books for the Regular Session of the Fifty-seventh Legislature. He shall also examine records and accounts payable out of the Contingent Expense Fund as shall be necessary, properly to approve all claims and accounts against the Senate, and no claim or account shall be paid without his consent and approval, and he shall be entitled to receive his actual and necessary expenses incurred while in the performance of such duties during the interim.

The Lieutenant Governor shall appoint a Custodian of the Senate to perform such services as the Lieutenant Governor or the Secretary of the Senate may direct and the Custodian to receive the sum of \$11.00 per day.

Resolved, That there shall be printed 325 volumes of the Senate Journal of the Regular Session and the First Called Session of the Fifty-seventh Legislature, and when com-

pleted, 250 copies shall be bound in buckram and delivered to the Secretary of the Senate and one volume thus bound shall be forwarded by the Secretary of the Senate to each member of the Senate and House of Representatives, to the Lieutenant Governor, and 75 paper bound copies shall be furnished to the State Library. The printing of such Journals shall be done in accordance with the provisions of this resolution under the supervision of the Chairman of the Committee on Contingent Expense, provided further, that it shall be the duty of said Chairman to refuse to receive or receipt for said Senate Journals until corrected and published in accordance with the pre-existing law as finally approved by the Chairman of the Committee on Contingent Expense of the Senate. When the accounts have been certified to by the Chairman of the Committee on Contingent Expense of the Senate, said accounts shall be paid out of the Contingent Expense Fund of the Fifty-seventh Legislature; and, be it further resolved,

That all salaries herein authorized to be incurred and paid for shall be paid out of the per diem and contingent expense fund of the Fifty-seventh Legislature upon warrants signed by the Lieutenant Governor and the Secretary of the Senate. All warrants for the payment of materials, supplies and expenses of the Senate shall be paid upon warrants signed by the Lieutenant Governor and Chairman of the Senate Committee on Contingent Expenses; and be it further

Resolved, That the cash balance on hand under the provisions of S. R. No. 15 of the Forty-seventh Legislature be turned over to the Secretary of the Senate and he is directed to have full charge of the vending machines and to expend receipts thereof as now authorized by said resolution; and be it further

Resolved, That a matron be retained for the women's rest room at a salary of \$7.00 per day; and be it further

Resolved, That the Lieutenant Governor and the Chairman of the Senate Committee on Contingent Expense shall have authority to employ such additional personnel as may from time to time be required and to purchase such supplies and to make all such repairs and improvements as are necessary between the adjournment of

this session and the convening of the next session of the Legislature; and be it further

Resolved, That with the approval of the Lieutenant Governor and the Chairman of the Committee on Contingent Expense, the actual expenses of members serving on interim committees whose expenses are not otherwise provided for shall be reimbursed from the Contingent Expense Fund; and be it further

Resolved, That the Lieutenant Governor is authorized to appoint a clerk during the ad-interim to work under the direction of the Lieutenant Governor and the Chairman of the Contingent Expense Committee at a salary of \$8.00 per day in an office to be assigned; and be it further

Resolved, That the Lieutenant Governor is authorized to appoint Rev. W. H. Townsend, Senate Chaplain, during the ad-interim as an assistant to work under the direction of the Lieutenant Governor and the Chairman of the Contingent Expense Committee at a salary of \$11.00 per day.

The Sergeant-at-Arms is specifically directed not to permit the removal of any of the property of the Senate from the Senate Chamber or the rooms of the Senate.

Respectfully submitted,  
WEINERT,  
Chairman of the Caucus;  
AIKIN,  
Secretary of the Caucus.

On motion of Senator Aikin the reading of the report was dispensed with and the resolution was adopted.

#### Record of Vote

Senator Moffett asked to be recorded as voting "Nay" on the adoption of the above resolution.

(President in the Chair.)

#### Election of President Pro Tempore Ad Interim for the First Called Session of the Fifty-seventh Legislature

The President announced the election of the President Pro Tempore Ad Interim as the next order of business.

Senator Fuller nominated Senator Reagan of Nueces County as President Pro Tempore Ad Interim of the First Called Session of the Fifty-seventh Legislature.

Senators Hudson, Krueger, Parkhouse, Aikin, Secrest, Herring, Smith, Owen and Dies seconded the nomination of Senator Reagan as President Pro Tempore Ad Interim of the First Called Session of the Fifty-seventh Legislature.

There being no further nominations, the President appointed Senators Aikin and Colson as tellers to take up and count the ballots.

The ballots were taken up and counted and the President announced that Senator Reagan had received 30 votes with one present and not voting for President Pro Tempore Ad Interim of the First Called Session of the Fifty-seventh Legislature and declared him duly elected.

Senators Fuller, Krueger and Hudson were appointed to escort Senator Reagan and Mrs. Reagan to the President's Rostrum. The President administered the Constitutional Oath of Office as President Pro Tempore Ad Interim of the First Called Session of the Fifty-seventh Legislature to Senator Reagan.

The President then presented Senator Reagan to the Senate as their President Pro Tempore Ad Interim.

President Pro Tempore Reagan addressed the Senate, stating that he was deeply moved by the sentiments expressed and the great honor bestowed upon him and his family.

The President Pro Tempore then presented Mrs. Reagan to the Members of the Senate.

#### Conference Committee Report on House Bill 20

Senator Lane submitted the following Conference Committee Report on H. B. No. 20:

Austin, Texas,  
August 8, 1961.

Honorable Ben Ramsey, President of the Senate.

Honorable James A. Turman, Speaker of the House of Representatives.

Sirs: We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H. B. No. 20, have met and had same under consideration, and beg to report it back with the recommendation that it do pass in the form attached.

LANE  
HARDEMAN

REAGAN  
CREIGHTON  
FULLER

On the part of the Senate.

BALLMAN  
MURRAY  
QUILLIAM  
NUGENT

On the part of the House.

H. B. No. 20,

#### A BILL

To Be Entitled

An Act to raise revenue for the State of Texas; amending Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, so as to impose a limited sales, excise and use tax on the sale or use of certain tangible personal property in this State and providing for the administration and enforcement of such tax and the allocation of the revenues therefrom; amending Article 12.02, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, to provide that for franchise tax allocation purposes the term "total gross receipts of the corporation" as it applies to the sale of investments and capital assets shall include only the net gain from such sales; amending Article 12.21, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, so as to impose an additional franchise tax for the periods from May 1, 1962, to and including April 30, 1963, and from May 1, 1963, to and including April 30, 1964; amending Article 13.02, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, so as to impose a uniform tax of Ten Dollars (\$10) per year on machines subject to the coin-operated machines tax; amending Article 13.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, so as to add certain classes of vending machines to the list of machines exempt from the coin-operated machines tax; amending Section 15 and Section 19 of Chapter 173, Acts of the Forty-seventh Legislature, Regular Session, 1941, as amended, so as to increase the rates of operator's, commercial operator's and chauffeur's license fees and to allocate the revenues derived from such increased fees; amending Article 9.25, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925,

so as to provide that all receipts due the Available School Fund which are in the Highway Motor Fuel Tax Fund on August 31st of each fiscal year shall be credited to the Available School Fund on August 31st of each fiscal year; amending Subsection (5) of Section 2 of Article XX of Chapter 184, Acts of the Forty-seventh Legislature, Regular Session, 1941, to provide that excess money remaining in special funds to which allocations are made from the Omnibus Tax Clearance Fund be transferred to the General Revenue Fund; amending Chapter 3, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, by adding a new Article to be known as Article 3.11, imposing a tax on the occupation of producing gas as a severance beneficiary and providing for the administration and enforcement of such tax and the allocation of the revenues therefrom; amending Chapter 1 of Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, by adding a new Article 1.13 to provide that postmarks dated on or before date set by law for compliance with certain requirements for making payments or filing certain documents under Title 122A shall be sufficient proof of compliance; amending Chapter 23 of Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, by adding a new Article 23.07 to provide certain penalties for failure to report or pay hotel occupancy tax when due; amending Sections (1), (3) and (4) of Article 3.03, Sections (7) and (10) of Article 4.03, Article 4.06, Article 5.03, Article 11.11, Article 12.09, Article 12.14, Article 12.15, Section 3 of Article 12.19, Article 17.04, Article 18.03, Sections (3) and (5) of Article 19.02, and Section 1 of Article 21.04 of Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, to provide certain uniform penalties for failure to report or pay certain taxes when due, providing a uniform rate of interest on such delinquent taxes and eliminating the requirement that certain reports be under oath or verified; providing for effective dates; repealing laws in conflict; providing that the provisions of Article VI shall be nonseverable and providing for severability of all

other Articles; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

#### ARTICLE I

Section 1. Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

#### "CHAPTER 20

Limited Sales, Excise and Use Tax  
Article 20.01. Title—Definitions.

This Chapter is known and may be cited as the "Limited Sales, Excise and Use Tax Act," and the following words shall have the following meanings unless a different meaning clearly appears from the context:

(A) Person. "Person" shall mean and include any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustees, trustee in bankruptcy, syndicate, cooperative, assignee, or any other group or combination acting as a unit. "Person" shall also include the United States or any agency thereof, this State, or any agency hereof, or any city, county, special district, or other political subdivision of this State to the extent engaged in the selling of tangible personal property taxable under this Chapter.

(B) Comptroller. "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(C) Business. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

(D) Receipts.

(1) "Receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the tangible personal property sold. However, in accordance with such rules and regulations as the Comptroller may prescribe, a deduction may be taken if the retailer has purchased tangible personal property for some purpose

other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the tangible personal property, and has resold the tangible personal property prior to making any use of the tangible personal property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the tangible personal property.

(b) The cost of the materials used, labor or service costs, interest paid, losses or other expenses.

(c) The cost of transportation of the tangible personal property prior to its sale to the purchaser.

(2) "Receipts" does not include any of the following:

(a) Cash discounts allowed on sales.

(b) Sales price of tangible personal property returned by customers when the full sales price is refunded either in cash or credit.

(c) The amount charged for labor or services rendered in installing, applying, remodeling or repairing the tangible personal property sold.

(d) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(e) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

(f) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of a like kind or nature.

(g) Charges for transportation of tangible personal property after sale.

(3) For purposes of the limited sales tax, if the retailer establishes to the satisfaction of the Comptroller that the limited sales tax has been added to the total amount of the sale price and has not been absorbed by him, the total amount of the sale price shall be deemed to be the

amount received exclusive of the tax imposed.

(E) In this State or within the State. "In this State" or "Within the State" means within the exterior limits of the State of Texas and includes all territory within these limits owned by or ceded to the United States of America.

(F) Occasional Sale. "Occasional Sale" means one (1) or two (2) sales of tangible personal property at retail during any twelve-month period by a person who does not hold himself out as engaging (or who does not habitually engage) in the business of selling such tangible personal property at retail.

(G) Purchase. "Purchase" means:

(1) Any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

(2) A transaction whereby the possession of tangible personal property is transferred but the seller retains the title as security for the payment of the price.

(3) A transfer, for a consideration, of tangible personal property which has been produced, fabricated or printed to the special order of the customer.

(H) Rental Price or Lease Price.

(1) "Rental Price" or "Lease Price" means the total amount for which tangible personal property is rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the tangible personal property rented or leased.

(b) The cost of material used, labor or service cost, interest charged, losses, or any other expenses.

(c) The cost of transportation of the tangible personal property at any time.

(2) The total amount for which tangible personal property is rented or leased includes all of the following:

(a) Any services which are a part of the lease or rental.

(b) Any amount for which credit is given to the lessee or rentee by the lessor or renter.

(I) Retail Sale or Sale at Retail. "Retail Sale" or "Sale at Retail" means:

(1) A sale for any purpose other

than for resale in the regular course of business of tangible personal property.

(2) The delivery in this State of tangible personal property by an owner or former owner thereof or by a factor or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this State. The person making the delivery in such cases shall include the retail selling price of the tangible personal property in his receipts.

(J) Retailer.

(1) "Retailer" includes:

(a) Every seller engaged in the business of making sales of tangible personal property for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.

(b) Every person making more than two retail sales of tangible personal property during any twelve-month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy.

(c) Every person who leases or rents to another tangible personal property for storage, use or other consumption, except that persons engaged in the leasing or licensing of motion picture films of any kind or character to motion picture theaters, television stations and others shall be liable for the tax levied under the provisions of this law, and they shall not pass said tax along to the person or persons to whom they lease or license said motion picture films.

(2) When the Comptroller determines that it is necessary for the efficient administration of this Chapter to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Comptroller may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this Chapter.

(K) Sale.

(1) "Sale" means and includes any transfer of title or possession, or segregation in contemplation of transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

(2) "Sale" includes:

(a) The producing, fabrication, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing or imprinting.

(b) The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others.

(c) The furnishing, preparing or serving for a consideration of food, meals, or drinks.

(d) A transaction whereby the possession of tangible personal property is transferred but the seller retains the title as security for the payment of the price.

(e) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer.

(L) Sales Price.

(1) "Sales Price" means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the tangible personal property sold.

(b) The cost of material used, labor or service costs, interest paid, losses, or any other expenses.

(c) The cost of transportation of the tangible personal property prior to its sale or purchase.

(2) The total amount for which tangible personal property is sold includes all of the following:

(a) Any services which are a part of the sale.

(b) Any amount for which credit is given to the purchaser by the seller.

(3) "Sales Price" does not include any of the following:

(a) Cash discounts allowed on sales.

(b) The amount charged for tangible personal property returned by customers when the entire amount charged therefor is refunded either in cash or credit.

(c) The amount charged for labor or services rendered in installing, applying, remodeling or repairing the tangible personal property sold.

(d) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(e) The amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of tangible personal property under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

(f) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of any kind or nature.

(g) Charges for transportation of tangible personal property after sale.

(M) Seller. "Seller" includes every person engaged in the business of selling, leasing or renting tangible personal property of a kind, the receipts from the retail sale, lease or rental of which are required to be included in the measure of the limited sales tax.

(N) Storage. "Storage" includes any keeping or retention in this State for any purpose except sale in the regular course of business or subsequent use solely outside this State of tangible personal property purchased from a retailer.

(O) Storage and Use Exclusion—"Storage" and "Use" do not include the keeping, retaining or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the State for use thereafter solely outside the State, or for the purpose of being processed, fabricated or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the State and thereafter used solely outside the State.

(P) Tangible Personal Property. "Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched,

or which is in any other manner perceptible to the senses.

(Q) Taxpayer. "Taxpayer" means any person liable for tax under this Chapter.

(R) Use. "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that tangible personal property except that it does not include the sale of that tangible personal property in the regular course of business.

(S) Sale for Resale. "Sale for Resale" shall mean a sale of tangible personal property to any purchaser who is purchasing said tangible personal property for the purpose of reselling it in the normal course of his business. A sale for resale shall include a sale of tangible personal property to a purchaser for the sole purpose of that purchaser's renting or leasing said tangible personal property to another person, but not if incidental to the renting or leasing of real estate.

(T) Contractor or Repairman. "Contractor" or "Repairman" shall mean any person who performs any repair services upon tangible personal property or who performs any improvement upon real estate, and who, as a necessary and incidental part of performing such services, incorporates tangible personal property belonging to him into the property being so repaired or improved. Contractor or repairman shall be considered to be the consumer of such tangible personal property furnished by him and incorporated into the property of his customer, for all of the purposes of this Chapter.

(1) The above provision shall apply only if the contract between the person performing the services and the person receiving them contains a lump sum price covering both the performance of the services and the furnishing of the necessary incidental material.

(2) If the contract between the person providing the services and the person receiving them contains separate amounts applicable to the performance of the services and the furnishing of the material then the above Section shall not apply, and the person furnishing the materials shall be liable for the limited sales tax upon the agreed price of the materials as thus set forth in the contract. Provided, however, that the agreed price of the materials shall not be less than

the actual cost of such materials to the person so providing them.

(3) In any case where the person so providing such materials has paid the limited sales tax to his supplier when purchasing the tangible personal property, he shall be entitled to credit the tax so paid to his supplier against any tax imposed by this Chapter with respect to his subsequent sale of that tangible personal property.

(U) Manufacturing. "Manufacturing" shall mean and include every operation commencing with the first production stage of any article of tangible personal property and ending with the completion of tangible personal property having the physical properties (including packaging, if any) which it has when transferred by the manufacturer to another.

Article 20.02. Imposition of Limited Sales Tax. There is hereby imposed upon each separate sale at retail of tangible personal property made within this State a limited sales tax at the rate of two per cent (2%) of the sale price of each item or article of tangible personal property when sold at retail in this State.

(A) Method of Collection and Rate of Limited Sales Tax. The tax hereby imposed shall be collected by by the retailer from the consumer.

(1) The tax shall be as follows and shall be collected by using the following bracket system formula on each retail sale:

Amount	Tax
\$ .01 to \$ .24	NO TAX
.25 to .74	\$.01
.75 to 1.24	.02
1.25 to 1.74	.03
1.75 to 2.24	.04

Provided, further, that for each additional fifty cents (50¢) of purchase, or fraction thereof, one cent (1¢) limited sales tax shall be collected thereon.

(2) The use of tokens or stamps for the purpose of collecting or of enforcing the collection of the tax imposed in this Chapter or for any other purpose in connection with such tax is prohibited.

(B) Assumption or Absorption of Tax by Retailer; Unlawful Advertising.

(1) It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer, either directly or indirectly, that the tax or any part thereof will be assumed or absorbed by him or that it will not

be added to the selling price of the tangible personal property sold or that, if added, it or any part of it will be refunded. Provided, however, that this paragraph (B) does not prohibit any utility from billing its customers in one lump sum covering the utility sales price plus the tax imposed by this Chapter.

(2) Any person violating any provision of this paragraph is guilty of a misdemeanor.

(C) Limited Sales Tax Permit Application.

(1) Every person desiring to engage in or to conduct business as a seller within this State shall file with the Comptroller an application for a permit for each place of business.

(2) Every application for a permit shall:

(a) Be made upon a form prescribed by the Comptroller.

(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his place or places of business.

(c) Set forth such other information as the Comptroller may require.

(d) The application shall be signed by the owner if he is a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

(D) Limited Sales Permit Issuances. After compliance with paragraph (C) of this Article by the applicant, the Comptroller shall grant and issue to each applicant without charge a separate permit for each place of business within the State. A permit shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

(E) Revocation, Suspension of Permit: Procedure.

(1) Whenever any person fails to comply with any provision of this Chapter relating to the limited sales tax or with any rule or regulation of the Comptroller relating to such tax prescribed and adopted under this Chapter, the Comptroller upon hearing, after giving the person twenty (20) days' notice in writing specifying the time and place of hearing and requiring him to show cause why his

permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person.

(2) The Comptroller shall give to the person written notice of the suspension or revocation of any of his permits.

(3) The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(4) The Comptroller shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this Chapter relating to the limited sales tax and the regulations of the Comptroller.

(5) The action of the Comptroller may be appealed by the taxpayer in the same manner as a final deficiency determination.

(F) **Presumption of Taxability: Resale Certificate.** For the purpose of the proper administration of this Chapter and to prevent evasion of the limited sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the tangible personal property is purchased for the purpose of reselling, leasing or renting it.

(G) **Effect of Resale Certificate.** The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling, leasing or renting tangible personal property. A resale certificate may be given by a purchaser, who at the time of purchasing the tangible personal property, intends to sell, lease or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the tangible personal property will be resold, leased or rented or will be used for some other purposes.

(H) **Form and Contents of Resale Certificate.**

(1) The certificate shall:

(a) Be signed by and bear the name and address of the purchaser.

(b) Indicate the number of the permit, if any, issued to the purchaser.

(c) Indicate the general character

of the tangible personal property sold, leased or rented by the purchaser in the regular course of business.

(2) The certificate shall be substantially in such form as the Comptroller may prescribe.

(I) **Liability of Purchaser Giving Resale Certificate.** If a purchaser who gives a resale certificate makes any use of the tangible personal property other than retention, demonstration or display while holding it for sale, lease or rental in the regular course of business, the use shall be taxable to the purchaser as of the time when the tangible personal property is first so used, and the sales price of the tangible personal property to him shall be deemed the measure of the tax.

(J) **Resale Certificate: Commingled Fungible Goods.** If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of goods covered by the resale certificate until a quantity of such goods equal to the quantity of the goods so commingled has been sold.

(K) **Bad Debts.** Credit shall be allowed to the retailer for taxes paid on sales represented by that portion of an account determined to be worthless and actually charged off for federal income tax purposes or on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

(L) **Refunds and Allowances.** Credit shall be allowed to the retailer for taxes paid on the amount of any refunds or credits allowed to a purchaser as a result of a bona fide renegotiation of a sales price. Such renegotiation shall include agreements by which the seller refunds or allows credit for any amount in satisfaction for an alleged breach of warranty with respect to tangible personal property previously sold by him to the person with whom said agreement is made.

**Article 20.03. Imposition and Rate of Use Tax.** An excise tax is hereby imposed on the storage, use or other consumption in this State of tangible personal property purchased, leased or rented from any retailer on or aft-

er September 1, 1961, for storage, use or other consumption in this State at the rate of two per cent (2%) of the sales price of the property or, in the case of leases or rentals, of said lease or rental prices.

(A) Liability for Use Tax: Extinguishment of Liability. Every person storing, using or otherwise consuming in this State tangible personal property purchased from a retailer or leased or rented from another person for such purpose is liable for the tax. His liability is not extinguished until the tax has been paid to this State, except that a receipt from a retailer maintaining a place of business in this State or from a retailer who is authorized by the Comptroller, under such rules and regulations as he may prescribe, to collect the tax and who is, for the purposes of this Chapter relating to the use tax, regarded as a retailer maintaining a place of business in this State, given to the purchaser pursuant to paragraph (B) of this Article is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(B) Collection by Retailer. Purchaser's Receipt. Every retailer maintaining a place of business in this State and selling, leasing or renting tangible personal property for storage, use or other consumption in this State, shall, at the time of making the sales, collect any use tax which may be due from the purchaser and shall give the purchaser a receipt therefor in the manner and form prescribed by the Comptroller.

(C) Assumption, Absorption of Tax by Retailers, Unlawful Advertising. It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling, renting, or leasing price of the tangible personal property sold, rented or leased, or that, if added, it or any part thereof will be refunded.

(D) Unlawful Acts. Any person convicted of violating paragraphs (B) or (C) of this Article shall be guilty of a misdemeanor and shall suffer the penalties set forth in Article 20.12 (D) of this Chapter.

(E) Registration of Retailers. Every retailer selling, leasing or renting tangible personal property for storage, use or other consumption in

this State shall register with the Comptroller and give:

(1) The names and addresses of all agents operating in this State.

(2) The location of all distribution or sales houses or offices or other places of business in this State.

(3) Such other information as the Comptroller may require.

(F) Presumption of Purchase for Use. Resale Certificate. For the purpose of the proper administration of this Chapter and to prevent evasion of the use tax and of the duty to collect the use tax, it shall be presumed that tangible personal property sold, leased or rented by any person for delivery in this State is sold, leased or rented for storage, use or other consumption in this State until the contrary is established. The burden of proving the contrary is upon the person who sells, leases or rents the property unless he takes from the purchaser a certificate to the effect that the tangible personal property is purchased for resale, leasing or rental.

(G) Effect of Resale Certificate. The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property. A resale certificate may be given by a purchaser who, at the time of purchasing the tangible personal property, intends to sell, lease or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the tangible personal property will be so sold, leased or rented or will be used for some other purpose.

(H) Form and Contents of Resale Certificate.

(1) The certificate shall:

(a) Be signed and bear the name and address of the purchaser.

(b) Indicate the number of the permit, if any, issued to the purchaser.

(c) Indicate the general character of the tangible personal property sold, leased or rented by the purchaser in the regular course of business.

(2) The certificate shall be substantially in such form as the Comptroller may prescribe.

(I) Liability of Purchaser Giving Resale Certificate; Use of Article Bought for Resale. If a purchaser who gives a resale certificate makes any use of the tangible personal property other than retention, demonstra-

tion or display while holding it for sale, lease or rental, in the regular course of business, the use shall be taxable to the purchaser as of the time when the tangible personal property is first so used, and the sales price of the property to him shall be deemed the measure of the tax.

(J) Improper use of Resale Certificates. Any person who gives a resale certificate to the seller for tangible personal property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease or rental by him in the regular course of business is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12 (B) of this Chapter.

(K) Resale Certificate: Commingled Fungible Goods. If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such a similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods covered by the resale certificate until a quantity of commingled goods equal to the quantity of such goods so commingled has been sold.

(L) Presumption of Purchase from Retailer. It shall be further presumed in the absence of evidence to the contrary, that tangible personal property shipped or brought to this State by the purchaser after the effective date of this Chapter was purchased from a retailer on or after the effective date of this Chapter for storage, use, or other consumption in this State.

Article 20.04. Exemptions. "Exempted from taxes imposed by this Chapter," as used herein, means exempted from the computation of the amount of the taxes imposed.

Exemption Certificates. If a purchaser certifies in writing to a seller that the tangible personal property purchased will be used in a manner or for a purpose entitling the seller to regard the receipts from the sale as exempted by this Chapter from the computation of the amount of the limited sales tax, and if the purchaser then uses the tangible personal property in some other manner or for some other purpose, the purchaser shall be liable for payment of the

limited sales tax as if he were a retailer making a retail sale of the tangible personal property at the time of such use, and the cost of the tangible personal property to him shall be deemed the receipts from such retail sale for the purpose of determining the amount of tax for which he is liable.

(A) Constitution and Statutory Exemptions. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of and the storage, use or other consumption in this State of tangible personal property the gross receipts from the sale, lease or rental of which, or the storage, use or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

(B) Items Taxed Under Existing Statutes.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental, production or distribution or the storage, use or other consumption in this State of (a) natural gas as taxed under the provisions of Chapter 3 of this Title; (b) oil as taxed under the provisions of Chapter 4 of this Title; (c) sulphur as taxed under the provisions of Chapter 5 of this Title; (d) motor vehicles, trailers and semi-trailers as defined and taxed under the provisions of Chapter 6 of this Title; (e) cigarettes as defined and taxed under the provisions of Chapter 7 of this Title; (f) cigars and tobacco products as defined and taxed under the provisions of Chapter 8 of this Title; (g) motor fuels as defined, taxed or exempted under the provisions of Chapter 9 of this Title; (h) special fuels as defined, taxed or exempted under the provisions of Chapter 10 of this Title; and (i) cement as taxed under the provisions of Chapter 18 of this Title.

(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, production, distribution or the storage, use or other consumption in this State of alcoholic beverages, including distilled spirits, beer, ale and wine, subject to a tax imposed by the Texas Liquor Control Act, as amended; except that any such alcoholic beverages shall be taxable when, and only when, consumed with food as a part of a meal served on

or off the premises of the vendor for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the vendor.

(3) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of water.

(4) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of telephone and telegraph service.

(C) Component Parts: Packaging and Containers.

(1) Component Parts. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State of, tangible personal property which will become an ingredient or component part of, or be incorporated into or used or consumed in a manufactured, processed or fabricated product of tangible personal property produced for ultimate sale at retail within or without this State; and tangible personal property, such as chemical materials used as catalytic agents, used or consumed in any manner in manufacturing, processing or fabricating a product of tangible personal property for ultimate sale at retail within or without this State. The exemption provided by this Subsection does not apply to machinery or equipment having a useful life, when new, in excess of six (6) months or to replacement parts and accessories for such machinery and equipment or to tangible personal property such as hand tools, intraplant transportation equipment, expendable items and supplies, office machines and supplies and other materials which are incidental to or useful in manufacturing, processing or fabricating operations.

(2) Wrapping, Packing and Packaging Supplies.

(a) There are exempted from the taxes imposed by this Chapter the receipts from sales of all internal and external wrappings, packing, and packaging supplies and materials to any person for use in wrapping, packing or packaging any tangible personal property for the purpose of ex-

pediting or furthering in any way the sale of that property.

(b) For the purpose of this Section, wrapping, packing and packaging supplies shall include, but shall not be limited to:

(1) Wrapping paper, wrapping twine, bags, cartons, crates, crating materials, tape, rope, labels, staples, glue and mailing tubes;

(2) Property used inside a package in order to shape, form, preserve, stabilize or protect the contents, such as, but not limited to, excelsior, straw, cardboard fillers, separators, shredded paper, ice, dry ice, cotton batting, shirt boards, hay and laths.

(3) Containers.

(a) There are exempted from the taxes imposed by this Chapter the receipts of sales, leases, or rentals of, and the storage, use or other consumption, in this State, of:

(1) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

(2) Containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this Chapter.

(3) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

(a) As used in this Article, the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers."

(D) Meals and Food Products; Sales to Students; Teachers. There are exempted from the taxes imposed by this Chapter the receipts from the sale of, and the storage, use or other consumption in this State of, meals and food products for human consumption served by public or private schools, school districts, student organizations, or Parent-Teacher Associations pursuant to an agreement with the proper school authorities, to the students or teachers of an elementary or secondary school during the regular school day.

(E) Interstate Shipments.

(1) Property Shipped Outside State Pursuant to Sales Contract; Delivery by Retailer. There are exempted from the taxes imposed by this Chapter re-

ceipts from any sale of tangible personal property which, pursuant to the contract of sale, is shipped to a point outside this State by the retailer by means of:

(a) Facilities operated by the retailer.

(b) Delivery by the retailer to a carrier for shipment to a consignee at such point; or

(c) Delivery by the retailer to a customs broker or forwarding agent for shipment outside this State.

(2) Common Carriers. There are exempted from the computation of the limited sales tax, the receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this State and the tangible personal property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier outside the State of Texas.

(3) Special Use Tax Exemption. The use tax imposed herein shall not apply to:

(a) The use, in this State, of tangible personal property which is acquired outside this State and which is moved into this State for use as a licensed and certificated carrier of persons or property.

(b) The temporary storage in this State of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property which is used solely outside this State.

(c) The storage, use or consumption of tangible personal property which is acquired outside this State, the sale, lease or rental or the storage, use or consumption of which tangible personal property would be exempt from the limited sales or use tax were it purchased within this State.

(d) The storage and use, in this State, of tangible personal property acquired outside this State for use as a repair or replacement part for and actually affixed to a licensed and certificated carrier of persons or property.

(F) United States; State; Political

Subdivisions; Religious, Eleemosynary Organizations. There are exempted from the computation of the amount of the taxes imposed by this Chapter, the receipts from the sale, lease or rental of any tangible personal property to, or the storage, use or other consumption of tangible personal property by:

(1) The United States, its unincorporated agencies and instrumentalities.

(2) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(3) The State of Texas, its unincorporated agencies and instrumentalities.

(4) Any county, city, special district or other political subdivision of this State.

(5) Any organization created for religious, educational, charitable or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

(G) Occasional Sales. There are exempted from the taxes imposed by this Chapter the receipts from the occasional sales of tangible personal property and the storage, use or other consumption in this State of tangible personal property the transfer of which to the consumer constitutes an occasional sale or the transfer of which to the consumer is made by way of an occasional sale.

(H) Written Contracts and Bids Executed Prior to the Effective Date of this Chapter. There are exempted from the taxes imposed by this Chapter the receipts from the sale, use or rental of, and the storage use or other consumption in this State of, tangible personal property (i) used for the performance of a written contract entered into prior to the effective date of this Chapter or (ii) pursuant to the obligation of a bid or bids submitted prior to the effective date of this Chapter which bid or bids could not be altered or withdrawn on or after that date and which bid or bids and contract entered into pursuant thereto are at a fixed price not subject to change or modification by reason of a tax imposed by this Chapter.

Provided, however, that notice of such contract or bid by reason of which an exclusion is claimed under

this paragraph (H) must be given by the taxpayer to the Comptroller on or before the lapse of one hundred and twenty (120) days from the date of passage of this Chapter.

(I) Use Tax: Reciprocal Credit for Similar Taxes Paid Elsewhere. There shall be allowed as a credit to any taxpayer against the use tax imposed by this Chapter upon any tangible personal property, the amount of any like tax paid by that taxpayer in another State, territory or possession of the United States of America with respect to the sale, purchase or use of such property; provided that such other states, territories, or possessions provide for a similar tax credit for taxpayers of this State.

(J) Use Tax Inapplicable When Limited Sales Tax Applies or When Use Tax Previously Paid. The storage, use or other consumption in this State of tangible personal property, the receipts from the sale, lease, rental or use of which are required to be included in the measure of the limited sales tax, or tangible personal property upon which a use tax has been paid by the taxpayer using said tangible personal property, is exempted from the use tax imposed by this Chapter.

(K) Food and Food Products for Human Consumption. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of, food products for human consumption.

(1) "Food Products" shall include, except as otherwise provided herein, but shall not be limited to, cereals and cereal products; milk and milk products, including ice cream; oleomargarine; meat and meat products; poultry and poultry products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit and fruit products; spices, condiments and salt; sugar and sugar products; coffee and coffee substitutes; tea, cocoa and cocoa products; or any combination of the above.

(2) "Food products" shall not include:

(a) Medicines, tonics, vitamins and medicinal preparations in any form;

(b) Water, including mineral bottled water, carbonated water, and carbonated and noncarbonated packaged soft drinks and diluted juices where

sold in liquid, frozen or dry-mix forms; and ice and candy.

(c) Meals served on or off the premises of the vendor or drinks or food furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware provided by the vendor. Provided, however, meals, food and drink served to patients and inmates of hospitals and other institutions licensed by the State for the care of human beings shall be deemed "food products."

(L) Drugs, Medicines, Prosthetic Devices. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of drugs and medicines when prescribed by a licensed physician. There are also exempted from the taxes imposed by this Chapter, braces, spectacles, hearing aids, and orthopedic and dental prosthetic appliances.

(M) Animal Life; Feed; Seeds; Plants; Fertilizer. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of:

(1) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption.

(2) Feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

(3) Seeds, annual plants, fungicides and insecticides applied thereto, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

(4) Fertilizer to be applied to land the products of which are to be used as food for human consumption or sold in the regular course of business.

(5) Farm machinery or equipment exclusively used or employed on farms or ranches in the production of food for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

(N) Sale for Resale: Leasing or Renting.

(1) There are exempted from the taxes imposed by this Chapter the receipts from all sales for resale, leasing or renting.

(2) However, if a person purchases tangible personal property for the purpose of leasing or renting it to another person, and if he later sells it by means of an occasional sale before he has collected and paid to this State as much tax on the rental or lease charges as would have been due and payable to this State had he not purchased the tangible personal property for the purpose of so renting and leasing it, he shall, at the time of his occasional sale of said tangible personal property include in his receipts from taxable sales the amount by which his purchase price exceeded the amount of rents collected by him on said tangible personal property.

(3) Where a lessor makes a retail sale of leased tangible personal property to a lessee of that tangible personal property under an agreement whereby certain rental payments are credited against the purchase price of that tangible personal property, he need not collect or pay any tax on the sale price to the extent that he has collected and paid on such rental payments.

(O) Vessels.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials, equipment and machinery which enter into and become component parts of ships, vessels, including commercial fishing vessels, or barges, of fifty (50) tons load displacement and over, built in this State, and the receipts from the sale of such ships, vessels, or barges when sold by the builder thereof.

(2) The taxes imposed by this Chapter shall not apply to the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials and supplies purchased by the owners or operators of ships or vessels operating exclusively in foreign or interstate coastwise commerce, where such materials and supplies are loaded upon the ship or vessel for use or consumption in the maintenance and operation thereof; or to materials and supplies used in the repair of such ships and vessels where such materials and supplies enter into and become a component part of such ships or vessels.

(3) The taxes imposed by this

Chapter shall not apply to the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of drilling equipment used for oil exploitation or production when such equipment is built for exclusive use outside the boundaries of the State and is removed forthwith from the State upon completion.

(P) Certain Aircraft. There are exempted from the taxes imposed by this Chapter the receipts from the sale, use, storage, lease or other consumption of aircraft sold to persons using such aircraft as certificated or licensed carriers of persons or property, or sold to any foreign government or sold to persons who are not residents of this State.

(Q) Certain Utility Service Exempt. There are exempted from the taxes imposed by this Chapter the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of gas and electricity when used in industrial, manufacturing, mining, agricultural, dairy or poultry operations or pumping water for irrigation or for electrical processes such as electroplating and electrolysis.

(R) Rolling Stock. There are exempted from the taxes imposed by this Chapter receipts from any sale, use, storage or other consumption of locomotives and rolling stock, including fuel or supplies for the direct operation of locomotives and trains.

(S) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State of books consisting wholly of writings sacred to any religious faith.

(T) Work Clothes.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, storage, use or other consumption in this State of any single article of outer wearing apparel, the retail price of which is less than Ten Dollars (\$10).

(2) For the purpose of this Section, the term "article of outer wearing apparel" shall not be construed to include clothing accessories such as cuff links, tie holders, tie clasps, belts, cravats, scarves, collar stays, stickpins, billfolds, wallets, handbags, canes, unattached buttons, ornamental jewelry of any type, bathing suits,

sleeping garments, bathrobes, lingerie, negligees, and lounging pajamas.

(3) For the purpose of this Section, any components of outer wearing apparel, as defined herein, ordinarily sold or offered for sale as a pair, suit or ensemble shall be, when sold, deemed to be the sale of a single article.

(4) Whenever any single article of outer wearing apparel sells for a retail price of Ten Dollars (\$10) or more, the tax shall be computed on the entire selling price of the article in accordance with the schedule set forth in Article 20.02 (A) of this Chapter.

#### Article 20.05. Return and Payments.

(A) Due Date of Taxes. The taxes imposed by this Chapter are due and payable to the Comptroller quarterly on or before the last day of the month next succeeding each quarterly period.

(B) Method Retailer is to Use in Computing Tax. The limited sales tax levied under Article 20.02 hereof shall be computed and paid to the Comptroller on the basis of two per cent (2%) of all receipts from the total sales of such tangible personal property sold by such retailer under said Article.

(C) Return: Time for Filing. Persons Required to File; Signatures; Accounting Basis.

(1) On or before the last day of the month following each quarterly period of three (3) months, a return for said quarterly period shall be filed with the Comptroller in such form as the Comptroller may prescribe.

(2) For purposes of the limited sales tax a return shall be filed by every person subject to the tax. For purposes of the use tax a return shall be filed by every retailer maintaining a place of business in the State and by every person who has purchased tangible personal property, the storage, use or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax.

(3) Returns shall be signed by the person required to file the return or by his duly authorized agent but need not be verified by oath.

(4) A taxpayer who keeps his regular books and records on a cash basis or on an accrual basis, or on any generally recognized accounting basis which correctly reflects the operation of the business, may file the tax returns required by this Chapter

on the same accounting basis that is used for the regular books and records.

#### (D) Contents of Return.

(1) For the purposes of the limited sales tax, the return shall show the sale or receipts of the retailer or seller during the preceding reporting period. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total receipts from sales of tangible personal property sold by him during the preceding reporting period which was purchased for the purpose of storage, use or consumption in this State.

(2) Gross proceeds from taxable rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect thereto in accordance with such rules and regulations as the Comptroller may prescribe.

(3) In case of a return filed by the purchaser; the return shall show the total sales price of the tangible personal property purchased by him, the storage, use or consumption of which became subject to the use tax during the preceding reporting period.

(4) The return shall also show the amount of the taxes for the period covered by the return and such other information as the Comptroller deems necessary for the proper administration of this Chapter.

(E) Reimbursement to Taxpayer for Collection of Tax; Prepayments. The taxpayer shall deduct and withhold from the taxes otherwise due from him on his quarterly tax return, one per cent (1%) thereof to reimburse himself for the cost of collecting the tax. Provided, however, an additional two per cent (2%) deduction shall be allowed a taxpayer who makes prepayments of his tax liability based upon a reasonable estimate of his tax liability for the quarter in which the prepayment is made. In order for the taxpayer to be entitled to the additional two per cent (2%) discount, the prepayment must be made on or before the fifteenth day of the second month of the calendar quarter for which the payment is made.

A taxpayer making a prepayment of his tax as provided for in this paragraph is not relieved from the filing of quarterly returns as provided for elsewhere in this Chapter. At the time the taxpayer files his

quarterly return showing his actual tax liability any prepayments made by the taxpayer shall be credited against his tax liability; in the event that there is tax liability owed by the taxpayer in excess of the prepayment, the taxpayer shall remit such excess at the time of filing his quarterly return and from such excess shall deduct and withhold one per cent (1%) of the amount of the excess. If the tax liability of the taxpayer is less than the prepayment of taxes, the excess of the prepayment shall be recorded as a credit against future tax liability or refunded to the taxpayer as provided for in Article 20.10.

In the event the payment of any taxes due under the applicable provisions of this Chapter are not paid within the time required, or in the event that the taxpayer does not file reports when due as provided by the provisions of this Chapter, the taxpayer forfeits his claim to any discount, including any discount that might have been taken by a taxpayer at the time of making a prepayment.

(F) Return Periods; Quarterly Periods Other than Calendar Quarters. The Comptroller, if he deems it necessary in order to insure payment to or facilitate the collection by the State of the amount of taxes due, may require returns and payment of the amount of said taxes for quarterly periods other than calendar quarters, in the case of a particular seller, retailer or purchaser, as the case may be, or for other than quarterly periods.

(G) Delivery of Return; Remittance. The person required to file the return shall deliver the quarterly return together with a remittance of the net amount of the tax due to the office of the Comptroller.

(H) Penalties for Failure to Pay or Report. If any person shall fail to file a report as required herein or shall fail to pay to the Comptroller the tax as imposed herein when said report or payment is due, he shall forfeit five per cent (5%) of the amount due as a penalty, and after the first thirty (30) days he shall forfeit an additional five per cent (5%). Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum, beginning sixty (60) days from the date due.

(I) The Comptroller may promul-

gate rules and regulations for the simplification of returns required by this Article for those classes of retailers a majority of whose gross receipts constitute sales of tangible personal property exempt from the taxes imposed by this Chapter. Provided, however, nothing herein shall relieve any retailer authorized to use a simplified tax return from any tax liability which may be established by an audit of such retailer's records.

Article 20.06. Deficiency Determination.

(A) Recomputation of Tax; Determination on Discontinuance of Business.

(1) If the Comptroller is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the State by any person, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or which may come into his possession.

(2) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in paragraph (D) of this Article as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this Chapter.

(B) Penalty for Fraud, Intent to Evade. If any part of a deficiency for which a deficiency determination is made is due to fraud or an intent to evade this Chapter or authorized rules and regulations, a penalty of twenty-five per cent (25%) of the amount of the determination shall be added thereto.

(C) Notice of Comptroller's Determination; Service.

(1) The Comptroller shall give to the retailer or person storing, using or consuming tangible personal property written notice of his determination.

(2) The notice may be served personally or by mail; if by mail, the notice shall be addressed to the retailer or person storing, using or consuming tangible personal property at his address as it appears in the records of the Comptroller.

(3) In case of service by mail of any notice required by this Chapter, the service is complete at the time of

deposit in the United States post office.

(D) Time Within Which Notice of Deficiency Determination to Be Mailed; Consent to later Mailing of Notice.

(1) Every notice of a deficiency determination shall be personally served or mailed within three (3) years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed or personally served within three (3) years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

(2) The limitation specified in this Article does not apply in case of a limited sales tax proposed to be determined with respect to sales of property for the storage, use or other consumption of which notice of a deficiency determination has been or is given pursuant to paragraphs (C), (D) (1) and (G) of this Article, and paragraph (B) of Article 20.07. The limitation specified in this Article does not apply in case of an amount of use tax proposed to be determined with respect to storage, use or other consumption of property for the sale of which notice of a deficiency determination has been or is given pursuant to paragraphs (C), (D) (1), and (G) of this Article, and paragraph (B) of Article 20.07 and to subparagraph 1 of this paragraph.

(3) If, before the expiration of the time prescribed in this Article for the mailing of a notice of deficiency determination, the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(E) Determination if No Return Made; Estimate and Computation; Discontinuance of Business.

(1) If any person fails to make a return, the Comptroller shall make an estimate of the receipts of the person, or, as the case may be, of the amount of the total sales, rent or lease price of tangible personal property

sold, rented or leased or purchased, by the person, the storage, use or other consumption of which in this State is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the Comptroller's possession or may come into his possession. Upon the basis of this estimate, the Comptroller shall compute and determine the amount required to be paid to the State, adding to the sum thus arrived at a penalty equal to ten per cent (10%) thereof. One or more determinations may be made for one or for more than one period.

(2) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in paragraph (D) of this Article as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this Chapter.

(F) Offsets; Computation; Interest.

(1) In making a determination, the Comptroller may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments.

(2) The interest on underpayments shall be computed in the manner set forth in paragraph (G) of Article 20.08.

(G) Notice of Estimate, Determination and Penalty; Service. Promptly after making his determination, the Comptroller shall give to the person written notice of the estimate, determination and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Article 20.07. Jeopardy Determinations.

(A) Jeopardy Determination; When Made; Due Date. If the Comptroller believes that the collection of any tax or any amount of tax required to be collected and paid to the State or the amount of any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting that fact upon the determination. The amount determined is due and payable immediately.

(B) Nonpayments; Finality of Determination. If the amount specified in the determination is not paid within twenty (20) days after service of notice thereof upon the person against whom the determination is made, the amount becomes final at the expiration of the twenty (20) days unless a petition for redetermination is filed within the twenty (20) days, a delinquency penalty of ten per cent (10%) of the tax or amount of the tax and the interest provided in paragraph (G) of Article 20.08 shall attach to the amount of the tax or the amount of the tax required to be collected.

(C) Petition for Redetermination; Deposit of Security. The person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to paragraphs (A) through (G) of Article 20.08. He shall, however, file the petition for redetermination with the Comptroller within twenty (20) days after the service upon him of notice of determination. The person shall also within the twenty-day period, deposit with the Comptroller such security as the Comptroller may deem necessary to insure compliance with this Chapter. The security may be sold by the Comptroller in the manner prescribed by paragraph (A), Article 20.09.

Article 20.08. Petition for Redetermination.

(A) Time to File.

(1) Any person against whom a determination is made under paragraphs (A) through (G) of Article 20.06, or any person directly interested, may petition for a redetermination within thirty (30) days after service upon the person of notice thereof.

(2) If a petition for redetermination is not filed within the thirty-day period, the determination becomes final at the expiration of the period.

(B) Oral Hearing; Notice; Continuances.

(1) If a petition for redetermination is filed within the thirty-day period, the Comptroller shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him twenty (20) days' notice of the time and place of the hearing.

(2) The Comptroller may continue the hearing from time to time as may be necessary.

(C) Increase, Decrease and Amount of Determination. The Comptroller may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Comptroller at or before the hearing, upon which the petitioner shall be entitled to a thirty-day continuance of the hearing to allow him to obtain and produce further evidence applicable to the items upon which the increase is based.

(D) Order of Comptroller on Petition for Redetermination; Finality of Order. The order or decision of the Comptroller upon a petition for redetermination becomes final thirty (30) days after service upon the petitioner of notice thereof.

(E) Due date of Determinations; Penalties. All determinations made by the Comptroller under paragraphs (A) through (G) of Article 20.06 are due and payable twenty (20) days after the time they become final. If they are not paid when due and payable, a penalty of ten per cent (10%) of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

(F) Service of Notice. Any notice required by paragraphs (A) through (E) of this Article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(G) Interest for Failure to Pay Tax; Amount; Rates. Any person who fails to pay any tax to the State or any amount of tax required to be collected and paid to the State within the time required, shall pay, in addition to the tax or amount of tax, interest at the rate of six per cent (6%) per annum, beginning sixty (60) days from the date on which the tax or the amount of tax required to be collected became due and payable to the State until the date of payment.

Article 20.09. Collection of Tax.

(A) Notice of Delinquency to Persons Holding Credits or Property of Delinquent; Transfer or Disposition of Property or Debt after Notice; Bank Deposits.

(1) If any person is delinquent in the payment of the amount required to be paid by him or in the event a determination has been made against him which remains unpaid, the Comptroller may, not later than three (3) years after the payment became de-

linquent or within three (3) years after the last recording of a lien, give notice thereof personally or by registered mail to all persons, including any officer or department of the State or any political subdivision or agency of the State, having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent, or persons owing any debts to the delinquent or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or such person. In the case of any State officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the State Comptroller.

(2) After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they received the notice until the Comptroller consents to a transfer or disposition, or until sixty (60) days elapse, after receipt of the notice, whichever period expires earlier.

(3) All persons so notified shall, within twenty (20) days after receipt of the notice, advise the Comptroller of all such credits, other personal property, or debts in their possession, under their control, or owing by them.

(4) If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, in order to be effective, shall be delivered or mailed to the office of such bank at which such deposit is carried or at which such credits or personal property is held.

(5) If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld hereunder, to the extent of the value of the property or the amount of the debts thus transferred or paid, he shall be liable to the State for any indebtedness due under this Chapter from the person with respect to whose obligation the notice was given.

(B) Action for Collection of Tax, Penalties, Interest; Limitation. At any time within three (3) years after any tax or any amount of tax re-

quired to be collected becomes due and payable, and at any time within three (3) years after the delinquency of any tax or any amount of tax required to be collected, or within three (3) years after the last recording of a lien, the Comptroller may bring an action in the courts of this State, or any other State, or of the United States, in the name of the people of the State of Texas, to collect the amount delinquent together with penalties and interest.

(C) Attorney General to Prosecute Action. The Attorney General shall prosecute the action, and the Rules of Civil Procedure relating to service of summons, pleadings, proofs, trials and appeals shall be applicable to the proceedings.

(D) Issuance of Writ of Attachment Without Bond, Affidavit. In the action a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment is required.

(E) Evidentiary Effect of Delinquency Certificate. In the action a certificate by the Comptroller showing the delinquency shall be prima facie evidence of the determination of the tax or the amount of the tax, of the delinquency of the amounts set forth, and of the compliance by the Comptroller with all the provisions of this Chapter in relation to the computation and determination of the amounts.

(F) Action for Use Tax; Manner of Service of Process. In any action relating to the use tax brought under this Chapter, process may be served according to the Rules of Civil Procedure or may be served upon any agent or clerk in this State employed by any retailer in a place of business maintained by the retailer in this State. In the latter case, a copy of the process shall forthwith be sent by registered mail to the retailer at his principal or home office.

(G) Judgment for Taxes.

(1) Comptroller May Sue. If any amount required to be paid to the State under this Chapter is not paid when due, the Comptroller may, within three (3) years after the amount is due, file in a court of competent jurisdiction in Travis County, Texas, or any county where the person owing the tax may be a resident or have a place of business, an action for recovery of such tax, together with any penalties and interest. Such action

shall be in the form of an action for debt, and the certificate of the Comptroller or his duly authorized agent that the tax is due, specifying the amount due together with penalty and interest, shall be prima facie evidence of the justness and correctness of such claim by the State. Service may be had according to the provisions of Article 20.09, paragraph (F) of this Chapter.

(2) Judgments May Be Abstracted. Any judgment obtained in favor of the State by an action brought under this Article may be filed for record with the county clerk of any county in this State and when so filed, shall constitute a lien upon all of the real property in the county owned by the person named as defendant in the judgment or thereafter acquired by him. Such lien shall have the force and effect of a judgment lien for ten (10) years from the date of judgment unless sooner released or discharged.

(3) Release. Upon payment in full of the amount of any judgment obtained under this Article, the Comptroller may issue a release of any such judgment lien. Prior judgments for taxes and penalties shall not bar subsequent suit by the Comptroller for additional taxes, or penalties or interest accruing after any such prior judgment, provided such suits are instituted within three (3) years after such taxes are due.

(4) Execution. Execution may issue upon any judgment obtained under this Article in the same manner as execution may issue in other judgments for debt, and sale shall be held under such execution as prescribed in the Rules of Civil Procedure and Statutes of this State.

#### (H) Seizure and Sale.

(1) Seizure and Sale. At any time within (3) years after any person is delinquent in the payment of any amount, the Comptroller may forthwith collect the amount in the following manner: The Comptroller shall seize any property, real or personal, of the person and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any interest or penalties on account of the seizure and sale. Any seizure made to collect a sales tax due shall be only of property of the vendor not exempt from execution under the laws of this State.

(2) Notice of Sale. Notice of the

sale and the time and place thereof shall be given to the delinquent person in writing at least twenty (20) days before the date set for the sale in the following manner: The notice shall be enclosed in an envelope addressed to the person, in case of a sale for limited sales tax due, at his last known address or place of business, and in case of a sale for use taxes due, at his last known residence or place of business in this State. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published for at least ten (10) days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three (3) public places in the county twenty (20) days prior to the date set for the sale. The notice shall contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with the law and the notice.

(3) Bill of Sale; Deed. At the sale, the Comptroller shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

(4) Disposition of Proceeds. If upon the sale the moneys received exceed the total of all amounts, including interest, penalties, and costs due the State, the Comptroller shall return the excess to the person liable for the amounts and obtain his receipt. If any person having an interest in or lien upon the property files with the Comptroller prior to the sale notice of his interest or lien, the Comptroller shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for

any reason the receipt of the person liable for the amount is not available, the Comptroller shall deposit the excess moneys with the State Treasurer, as trustee for the owner, subject to the order of the person liable for the amount, his heirs, successors, or assigns.

(I) Payment on Termination of Business and Successor's Liability.

(1) Withholding by Purchaser. If any vendor liable for any amount under this Chapter sells out his business or stock of goods or quits the business, his successor or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Comptroller showing that it has been paid or a certificate stating that no amount is due.

(2) Liability of Purchaser; Release. If the purchaser of a business or stock of goods fails to withhold purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within sixty (60) days after receiving a written request from the purchaser for a certificate, or within sixty (60) days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than ninety (90) days after receiving the request, the Comptroller shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Comptroller of the amount that must be paid as a condition of issuing the certificate. Failure of the Comptroller to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the vendor sells out his business or stock of goods or at the time that the determination against the vendor becomes final, whichever event occurs the later.

Article 20.10. Overpayments and Refunds.

(A) Certification of Excess Amount Collected: Credit and Refund. If the Comptroller determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or commuted, the Comptroller shall set

forth that fact in his records, and the excess amount collected or paid may be credited on any amount then due and payable from the person under this Chapter. Any balance may be refunded to the person by whom it was paid, or his successors, administrators or executors.

(B) Claims for Refund, Credit; Limitation.

(1) No refund shall be allowed unless a claim therefor is filed with the Comptroller by the person who overpaid the tax or his attorney, assignee, executor, or administrator, within three (3) years from the last day of the month following the close of the quarterly period for which the overpayment was made, or within six (6) months after any determination becomes final under paragraphs (A) through (G) of Article 20.06 or within six (6) months from the date of overpayment with respect to such determinations, whichever of these three (3) periods expires the later.

(2) No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Comptroller within such period, or unless the credit relates to a period for which a waiver is given pursuant to paragraph (D) under Article 20.06.

(C) Credit or Refund for Use Tax: Reimbursement of Retailer for Limited Sales Tax. No credit or refund of any amount paid pursuant to paragraphs (A) through (L) of Article 20.03 shall be allowed on the ground that the storage, use or other consumption of the tangible personal property is exempted under Article 20.04 unless the person who paid the amount reimburses his retailer for the amount of the limited sales tax imposed upon his vendor with respect to the sale of the tangible personal property and paid by the vendor to the State.

(D) Claim for Refund, Credit: Form: Contents. Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

(E) Effect of Failure to File Claim: Waiver. Failure to file a claim within the time prescribed in paragraph (B) of this Article constitutes a waiver of any demand against the State on account of overpayment.

(F) Notice of Disallowance of Claim: Service. Within thirty (30) days after disallowing any claim in

whole or in part, the Comptroller shall serve notice of his action on the claimant in the manner prescribed for service of notice of a deficiency determination.

(G) Injunction: Other Process to Prevent Tax Collection Prohibited. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this State or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected.

(H) Action for Refund: Claim as Condition Precedent. No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

(I) Action for Refund; Time to Sue; Venue of Action; Waiver.

(1) Within ninety (90) days after the mailing of the notice of the Comptroller action upon a claim filed pursuant to this Chapter, the claimant may bring an action against the Comptroller on the grounds set forth in the claim in a court of competent jurisdiction in Travis County, Texas, for recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

(2) Failure to bring action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayment.

(J) Right of Action on Failure to Mail Notice. If the Comptroller fails to mail notice of action on a claim within six (6) months after the claim is filed, the claimant may, prior to the mailing of notice by the Comptroller of his action on the claim, consider the claim disallowed and bring an action against the Comptroller on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(K) Judgment for Plaintiff: Credits: Refund of Balance.

(1) If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited as follows:

(a) If the judgment is for a refund of taxes, it shall be credited on any limited sales or use tax or amount of use tax due from the plaintiff.

(b) If the judgment is for a refund of use taxes, it shall be credited on

any use tax or amount of use tax due from the plaintiff under this Chapter.

(2) The balance of the judgment shall be refunded to the plaintiff.

(L) Allowance of Interest. In any judgment, interest shall be allowed at the rate of six per cent (6%) per annum upon the amount found to have been illegally collected from the date of payment of the amount to date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than thirty (30) days, the date to be determined by the Comptroller.

(M) Recovery of Erroneous Refunds: Action: Jurisdiction and Venue. The Comptroller may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought, within one (1) year from the date of refund or credit, in the name of the State, in a court of competent jurisdiction in the county in which the person involved is located.

(N) Change of Venue in Action to Recover Erroneous Refund. The action shall be tried in the county in which the person involved is a resident unless the court with the consent of the Attorney General orders a change of place of trial.

(O) Attorney General to Prosecute Action for Recovery of Erroneous Refund. The Attorney General shall prosecute the action, and the provisions of State law and the Rules of Civil Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings.

Art. 20.11. Administration.

(A) Enforcement by Comptroller: Rules and Regulations.

(1) The Comptroller shall enforce the provisions of this Chapter and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of this Chapter.

(2) The Comptroller may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(B) Employment of Accountants, Investigators and other Persons: Delegation of Authority. The Comptroller may employ accountants, auditors, investigators, assistants and clerks necessary for the efficient administration of this Chapter and may delegate authority to his representatives to con-

duct hearings, prescribe regulations, or perform any other duties imposed by this Chapter.

(C) Records to be Kept by Sellers, Retailers and Others.

(1) Every seller, every retailer, and every person storing, using or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the Comptroller may reasonably require.

(2) Every such seller, retailer or person shall keep such records for not less than three (3) years from the making of such records unless the Comptroller in writing sooner authorizes their destruction.

(D) Examination of Records: Investigation of Business. The Comptroller, or any person authorized in writing by him, may examine the books, papers, records and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

(E) Taxpayer's Right to Keep Records out of State. The taxpayer shall have the right to keep or store his records at a point outside this State, but, if the Comptroller wishes to examine said records, the taxpayer shall either bring the records into the State for such examination or shall reimburse the Comptroller for the increased expense of making the examination at the out-of-state location.

(F) Reports for Administering Use Tax: Contents. In administration of the use tax, the Comptroller may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property, the storage, use or other consumption of which is subject to the tax. The report shall:

(1) Be filed when the Comptroller requires.

(2) Set forth the names and addresses of purchasers of the tangible personal property, the sales price of the property, the date of sale, and such other information as the Comptroller may require.

(G) Disclosure of Information Unlawful: Examination of Records.

(1) It shall be a misdemeanor for any official or employee of the Comptroller to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and activities of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Comptroller.

However, the Comptroller may, by general or special order, authorize examination by other State officers, by tax officers of another state, by the Federal Government, if a reciprocal arrangement exists, or by any other person of the records maintained by the Comptroller under this Chapter.

Nothing herein contained shall be construed to prevent: The delivery to a taxpayer, or his duly authorized representative, of a copy of any report or other paper filed by him pursuant to the provisions of this Chapter; the publication of statistics so classified as to prevent the identification of a particular report and the items thereof; the use of such records, reports, or information secured, derived, or obtained by the Attorney General or the Comptroller under the terms of this Chapter in any action against the same taxpayer for a penalty or any tax due under any provision of this Chapter.

(2) Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest or penalties.

Article 20.12. Violations.

(A) Penalty for Engaging in Business as Seller Without Permit. A person who engages in business as a retailer in this State without a permit or permits or after a permit has been suspended, and each officer of any corporation which so engages in business, is guilty of a misdemeanor, and such person shall upon conviction be fined not more than Five Hundred Dollars (\$500) for each conviction. Each day of such operation shall constitute a separate offense.

(B) Penalty for Improper Use of Resale Certificate. Any person who gives a resale certificate to the seller for property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease or rental by him in the regular course of business is guilty of a misdemeanor, and such person shall upon conviction be fined not more than Five Hundred Dollars (\$500) for each conviction.

(C) Penalty for Failure to Make Return, Furnish Data. Any retailer or other person who refuses to furnish any return required to be made, or who refuses to furnish a supplemental return or other data required by the Comptroller, shall be guilty of a misdemeanor, and shall upon conviction be fined not more than Five Hundred Dollars (\$500) for each conviction.

(D) Penalty for other Violations. Any violation of this Chapter, except as otherwise provided, is a misdemeanor, and any person shall, when found guilty of such violation, be fined not more than Five Hundred Dollars (\$500) for each violation.

(E) Statute of Limitations. Any prosecution for violation of any of the penal provisions of this Chapter shall be instituted within three (3) years after the commission of the offense.

Article 20.13. Disposition of Proceeds. All fees, taxes, interest and penalties imposed, and all amounts of tax required to be paid to the State under this Chapter shall be paid to the Comptroller in the form of remittances payable to the Comptroller of Public Accounts of Texas. The Comptroller shall remit all fees, taxes, interest and penalties collected under this Chapter to the State Treasurer to be deposited in the State Treasury to the credit of the General Revenue Fund.

Article 20.14. Remedies of State are Cumulative. The remedies of the State provided for in this Chapter are cumulative and no action taken by the Comptroller or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this Chapter.

Article 20.15. Comptroller's Authority. In all proceedings under this Chapter the Comptroller may act for and on behalf of the people of the State of Texas.

Article 20.16. Res Judicata. In the determination of any case arising under this Chapter the rule of res judicata is applicable only if the liability involved is for the same quarterly period as was involved in another case previously determined.

Article 20.17. Tax suit Comity. The courts of this State shall recognize and enforce liabilities for sales and use taxes lawfully imposed by any other state, provided that such other state extends a like comity to this State."

## ARTICLE II

Section 1. That Article 12.02 of Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 12.02. Allocation Formula. Each corporation liable for payment of a franchise tax shall determine the portion of its entire taxable capital taxable by the State of Texas by multiplying same by an allocation percentage which shall be the percentage relationship which the gross receipts from its business done in Texas bear to the total gross receipts of the corporation from its entire business.

For the purpose of this Article, the term "gross receipts from its business done in Texas" shall include:

(a) Sales of tangible personal property located within Texas at the time of the receipt of or appropriation to the orders where shipment is made to points within this State;

(b) Services performed within Texas;

(c) Rentals from property situated, and royalties from the use of patents or copyrights, within Texas; and

(d) All other business receipts within Texas.

For the purpose of this Article, the term "total gross receipts of the corporation from its entire business" shall include all of the proceeds of all sales of the corporation's tangible personal property, all receipts from services, all rentals, all royalties and all other business receipts, whether within or outside of Texas. Provided, however, that, as to the sale of investments and capital assets, the term "total gross receipts of the corporation from its entire business" shall include only the net gain from such sales."

Sec. 2. That Article 12.21 of Title

122A, Taxation—General, of the Revised Civil Statutes of Texas, 1925, be amended to read as follows:

"Article 12.21. Additional Franchise Tax for Years Ending April 30, 1961; April 30, 1962; April 30, 1963; and April 30, 1964.

(1) In addition to the franchise tax due and payable under Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under the provisions of Article 12.01 of this Chapter an additional franchise tax for the privilege of doing business in Texas in corporate form in the periods from May 1, 1960, to and including April 30, 1961, and from May 1, 1961, to and including April 30, 1962, and from May 1, 1962, to and including April 30, 1963, and from May 1, 1963, to and including April 30, 1964, which additional franchise tax shall be computed by multiplying the tax due and payable under Article 12.01 of this Chapter for the aforesaid periods by 22.22 per cent.

(2) Corporations eligible to and electing to compute the franchise tax for which they are liable under the provisions of Article 12.19 of this Chapter shall, for the privilege of doing business in Texas in corporate form in the periods from May 1, 1960, to and including April 30, 1961, and from May 1, 1961, to and including April 30, 1962, and from May 1, 1962, to and including April 30, 1963, and from May 1, 1963, to and including April 30, 1964, pay an additional franchise tax in accordance with the following schedule:

If Total Assets Are at Least	But Less Than	The Additional Tax Shall Be
\$ 0.00	\$ 20,000.00	\$ 7.50
20,000.00	40,000.00	12.00
40,000.00	60,000.00	20.00
60,000.00	80,000.00	30.00
80,000.00	90,000.00	40.00
90,000.00	110,000.00	45.00
110,000.00	120,000.00	50.00
120,000.00	130,000.00	55.00
130,000.00	140,000.00	60.00
140,000.00	150,000.00	65.00

(3) The additional franchise tax levied by this Article shall be paid at the same time, in the same manner, and subject to the same terms, penalties and conditions as the franchise tax that will become due and payable in the same periods under the provisions of this Chapter.

(4) The State Comptroller of Pub-

lic Accounts shall have the right to make and promulgate such rules and regulations and to prescribe such forms as he deems necessary for the efficient and effective administration of the additional franchise tax levied by this Article.

(5) The additional franchise tax levied by this Article shall be cumulative of all other taxes imposed by this State.

(6) The additional franchise tax levied by this Article shall expire on April 30, 1964."

### ARTICLE III

Section 1. Article 13.02, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is hereby amended to read as follows:

"Article 13.02. Amount of Tax.

(1) Every "owner" who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in this State any "coin-operated machine" shall pay, and there is hereby levied on each "coin-operated machine," as defined herein in Article 13.01, except as are exempt herein, an annual occupation tax of Ten Dollars (\$10).

(2) Provided that nothing herein shall prevent the "operator of such machine from paying the tax levied in this Chapter for the account of the "owner" but the payment of such tax by such operator or other person shall not relieve the owner from the responsibility of complying with all provisions of this Chapter including the keeping of records required in this Chapter."

Sec. 2. Article 13.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is hereby amended to read as follows:

"Article 13.03. Exemptions from Tax.

Gas meters, pay telephones, pay toilets, food vending machines, confection vending machines, beverage vending machines, merchandise vending machines, and cigarette vending machines which are now subject to an occupation or gross receipts tax stamp vending machines, and "service coin-operated machines," as that term is defined, are expressly exempt from the tax levied herein, and the other provisions of this Chapter."

### ARTICLE IV

Section 1. That Section 19 of Chapter 173, Acts of the Forty-seventh Legislature, Regular Session, 1941, as

last amended by Section 2 of Chapter 108, Acts of the Fifty-fourth Legislature, Regular Session, 1955, be amended so as to hereafter read as follows:

"Section 19. Fees for License. The fees as provided for in this Act shall be as follows:

For a chauffeur's license, Six Dollars (\$6); for a commercial operator's license, Four Dollars and Fifty Cents (\$4.50); and for an operator's license, Three Dollars (\$3)."

Sec. 2. That Section 15 of Chapter 173, Acts of the Forty-seventh Legislature, Regular Session, 1941, as last amended by Section 2(a) of Chapter 1, Acts of the Fifty-sixth Legislature, Regular Session, 1959, be amended so as to hereafter read as follows:

"Section 15. Disposition of Fees. All fees and charges required by this Act and collected by any officer or agent of the Department shall be remitted without deduction on Monday of each week to the Department at Austin, Texas, and Two Dollars (\$2) derived from each chauffeur's license fee, and One Dollar and Fifty Cents (\$1.50) derived from each commercial operator's license fee, and One Dollar (\$1) derived from each operator's license fee shall be deposited in the State Treasury in the General Revenue Fund of the State; and the remainder of all fees so collected shall be deposited in the State Treasury in a fund to be known as the Operator's and Chauffeur's License Fund.

Fees and charges deposited in the Operator's and Chauffeur's License Fund under the provisions of this Act may, upon appropriation by the Legislature, be used by the Texas Department of Public Safety for the payment of salaries, purchase of equipment and supplies, maintenance, and any and all other necessary expenses incident to the operation of the Department of Public Safety in carrying out the duties as are by law required of such Department. Any remaining balance in the Operator's and Chauffeur's License Fund on September 1st of each and every year shall remain in such Fund and shall be available for appropriation by the Legislature for the maintenance and support of the Texas Department of Public Safety as set forth hereinabove."

#### ARTICLE V

Section 1. Article 9.25 of Chapter 9, Title 122A, Taxation—General, Re-

vised Civil Statutes of Texas, 1925, is hereby amended to read hereafter as follows:

"Article 9.25. Enforcement Fund, Allocation of Revenue.

Before any diversion or allocation of the motor fuel tax collected under the provisions of this Chapter is made, one per cent (1%) of the gross amount of said tax shall be set aside in the State Treasury in a special fund, subject to the use of the Comptroller in the administration and enforcement of the provisions of this Chapter, and so much of said proceeds of one per cent (1%) of the motor fuel tax paid monthly as may be needed in such administration and enforcement be and is hereby appropriated for said purpose. Any unexpended portion of said fund so specified shall, at the end of each fiscal year, revert to the respective funds in the proper proportions to which the Motor Fuel Tax Fund levied by this Chapter is allocated at the end of each fiscal year.

Each month the Comptroller of Public Accounts shall, after making the deductions for refund purposes as provided in Article 9.13 of this Chapter, and for the enforcement of the provisions of this Chapter, allocate and deposit the remainder of the taxes collected under the provisions of this Chapter in the proportions as follows: One-fourth ( $\frac{1}{4}$ ) of such tax shall go to, and be placed to the credit of, the Available Free School Fund; one-half ( $\frac{1}{2}$ ) of such tax shall go to and be placed to the credit of the State Highway Fund for the construction and maintenance of the State Road System under existing laws; and from the remaining one-fourth ( $\frac{1}{4}$ ) of such tax the Comptroller shall: (1) place to the credit of the County and Road District Highway Fund an amount determined by the Board of County and District Road Indebtedness and certified by the Board to the Comptroller of Public Accounts prior to August 31st each year, for the fiscal year beginning September 1st each year, to be required in addition to any and all funds already on hand, for the payment by the Board of the principal, interest and sinking fund requirements for each year, on all bonds, warrants or other legal evidences of indebtedness heretofore issued by counties or defined road districts of this State, which mature on or after January 1, 1933, insofar as amounts

of same were issued for and proceeds have been actually expended in the construction of roads that constituted and comprised a part of the system of designated state highways on September 17, 1932, or which subsequent to such date and prior to January 2, 1939, have been designated a part of the System of State Highways and declared by the Board of County and District Road Indebtedness prior to January 2, 1945, to be eligible to participate in the distribution of the moneys in the County and Road District Highway Fund under the provisions of existing laws; (2) for the fiscal year beginning September 1, 1951, and each fiscal year thereafter, the Comptroller shall place to the credit of the Fund known as the County and Road District Highway Fund the sum of Seven Million, Three Hundred Thousand Dollars (\$7,300,000), said amount to be provided on the basis of equal monthly payments, payable on the first day of each calendar month, which sum shall be allocated by the Board of County and District Road Indebtedness to all of the counties of Texas not later than September 15th of each year, through the Lateral Road Account, as provided under Subsection (h) of Section 6 of Chapter 324 of the General and Special Laws of the Forty-eighth Legislature, Regular Session, 1943, as amended by Section 1 of Chapter 319, Acts of the Fiftieth Legislature, 1947; and (3) the Comptroller shall place to the credit of the State Highway Fund the remainder of such one-fourth (1/4) of such tax, said amount to be provided on the basis of equal monthly payments, payable on the first day of each calendar month, which sum shall be used by the State Highway Department for the construction and improvement of Farm to Market Roads having the same general characteristics as the roads eligible for construction under Subsection 4b of Article XX of House Bill No. 8, Chapter 184, Acts of the Regular Session of the Forty-seventh Legislature, as amended.

All receipts due the Available School Fund which are in the Highway Motor Fuel Tax Fund on August 31st of each fiscal year shall be credited to the Available School Fund on August 31st of each fiscal year."

Sec. 2. Subsection (5) of Section 2, Article XX of Chapter 184, Acts of the Forty-seventh Legislature, Regular Session, 1941 (compiled as

Article 7083a, Vernon's Civil Statutes of Texas), is hereby amended to read hereafter as follows:

"(5) All other revenue or money of any kind or character remaining in such Clearance Fund shall be paid into the General Revenue Fund of the State of Texas, and any money or revenue in excess of current biennial appropriations remaining in the special funds to which allocations are made from the Clearance Fund after the fifth working day of each month shall be transferred to the General Revenue Fund."

#### ARTICLE VI

##### Dedicated Reserve Gas Tax

Section 1, That Chapter 3, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, be amended by inserting a new Article after Article 3.10, denominated Article 3.11, to read as follows:

"Article 3.11. Dedicated Reserve Tax.

##### (1) Declaration of Policy.

It is the policy of this State to obtain, as near as may be consistent with a fair and equitable tax policy, a tax return to the State of not less than one cent (1¢) per MCF on each MCF of natural gas produced and saved from the earth and waters of this State. The same is deemed necessary:

I. to derive a reasonable State revenue from the trillions of cubic feet of gas removed from the earth and waters of the State each year, and

II. to tax equitably all of those persons integrally engaged in the occupation of removing such gas, so that one associated group of them will not derive a windfall by virtue of a very small tax burden on each thousand cubic feet of gas produced by such others.

It is further the policy of this State, in order to promote conservation and to distribute equitably the burden of natural resources taxation, to recognize and clarify fully by statute the relation between various persons engaged in the occupation of producing natural gas so that the taxpayer in each instance may be identified clearly, and so that all persons so engaged in the occupation of production will bear equitably the taxes imposed in connection with the severance of gas from Texas soil.

Pursuant to this policy it is recognized that contractual relations exist in such natural gas production

occupation between several definable groups, all engaged integrally in such occupation of severance of natural gas from the soil and all having such a direct and beneficial interest in the production of gas that for the purpose of taxation they may be classified as producers of gas. It is the policy of the State of Texas to recognize that all such persons, integrally engaged in the occupation of severance of natural gas from the soil-producers, severance producers and dedicated reserve producers, have a taxable interest in production of gas in Texas.

(2) Definitions.

The definitions contained in Article 3.04, insofar as applicable, shall govern the meanings of the terms used in this Article. In addition, the following definitions are specifically applicable to this Article:

(a) "Severance producer" means any person owning, controlling, managing or leasing any gas well and/or any person who produces in any manner any gas by taking it from the earth or waters of this State, and shall include any person owning any royalty or other interest in gas or its value, whether produced by him, or by some other person in his behalf, either by lease or contract or otherwise, when such person producing gas is in contractual relation with the dedicated reserve producer (either directly, or, if a royalty or other holder of an interest in gas in place and thereby entitled to a fractional share of the value of such gas in place, indirectly through the producer).

(b) "Dedicated reserve producer" means any person holding a written contract for a designated term specified therein which confers upon such person the right to take title to gas from particular lands, leases and reservoirs in this State and imposes upon a severance producer the duty to supply all or a designated quantity or portion of gas produced by that severance producer (or by that severance producer in conjunction with other severance producers) to the dedicated reserve producer at a fixed or determinable price.

(c) "Severance beneficiary" has the following meaning:

I. In the case where there is in effect a dedicated reserve contract as to the gas in question, the term "severance beneficiary" refers to the dedicated reserve producer.

II. In the case where there is no dedicated reserve contract in effect as to the gas in question, the term "severance beneficiary" refers to the producer.

(d) "Dedicated reserve contract" means any written contract for a designated term specified therein which confers upon a dedicated reserve producer the right to take title to gas from particular lands, leases and reservoirs in this State, and imposes upon a severance producer the duty to supply all or a designated quantity or portion of gas produced by that severance producer (or by that severance producer in conjunction with others) to the dedicated reserve producer at a fixed or determinable price.

(e) I. Meaning of Residue Gas.

A. As to gas from which liquefiable hydrocarbons are removed, "residue gas" means that constituent part of the whole quantity of gas removed from the earth and waters of this State which eventually constitutes the residue. The tax is applicable under the terms of this Article to such constituent part of the whole quantity of gas at the time when it, along with the associated gasoline or other liquefiable hydrocarbons, is actually severed from the earth and waters of this State.

B. As to gas from which liquefiable hydrocarbons are not removed, "residue gas" means the entire quantity except that gas which is:

- (i) injected into the earth, unless sold for such purpose;
- (ii) produced from oil wells with oil and lawfully vented or flared; or
- (iii) used for lifting oil, unless sold for such purpose.

II. How measured. Such residue gas shall be measured by determining that portion of gas containing gasoline or other liquefiable hydrocarbons (that are to be removed or extracted at a plant by scrubbing, absorption, compression, or any other process) which is left after the application of such process and which flows through the outlet of such plant. In the event that such gas is processed in more than one such plant, the residue gas content shall be measured as that portion of the gas which flows through the outlet of the first plant.

As to that gas which passes through a separator and which is not processed in a plant to remove or extract the gasoline or other liquefiable hydrocarbons, the residue gas content

shall be measured as that portion of the gas remaining after its passage through such separator. In the event that such gas passes through more than one separator, the residue gas content shall be measured as that gas remaining after the passage through the first separator.

As to that gas which passes through a drip or trap and which does not pass through a separator and which is not processed in a plant to remove or extract gasoline or other liquefiable hydrocarbons, the residue gas content shall be measured as that portion of the gas remaining after passage through such drip or trap. In the event that such gas passes through more than one drip or trap, then the residue gas content shall be measured as that portion of the gas remaining after its passage through the last drip or trap.

As to that gas which passes through a meter and which does not pass through a drip or trap and which does not pass through a separator and which is not processed in a plant to remove or extract the gasoline or other liquefiable hydrocarbons, the residue gas content shall be measured as that portion of the gas remaining after it passes through such meter. In the event that such gas passes through more than one meter, then the residue gas content shall be measured as that gas which passes through the first meter.

(f) "MCF" means thousand cubic feet.

(3) The Tax Herein Levied.

(a) There is hereby levied, in addition to all other occupation taxes on the occupation of producing gas in Texas, an occupation tax on the business or occupation of producing gas within this State as a severance beneficiary at the rate of one cent (1¢) per thousand cubic feet of residue gas produced, applicable at the time the said gas is severed from the earth or waters of this State, less the amount of tax paid per MCF under the provisions of Article 3.01 of this Chapter, computed in the following manner:

In the case of all gas subject to the tax imposed by Article 3.01 there shall be ascertained the amount of tax in cents and fractions of a cent per thousand cubic feet paid to the State with respect to each quantity of such gas by virtue of the seven per cent (7%) of value tax provided in that

Article. If such amount is less than one cent (1¢) per MCF, then there shall be determined the difference between such amount and one cent (1¢) per MCF. Such amount multiplied by the quantity of the residue gas in question shall constitute the tax obligation of the severance beneficiary of such residue gas.

(b) The above is subject to the following exceptions:

(1) Without regard to any other provision of this Chapter, no producer producing natural gas from a newly discovered field shall be required to pay more than the seven per cent (7%) of the market value of gas therefrom produced until establishment of the first field rules for such field by the Railroad Commission or until the passage of six (6) months from the date of the first discovery of natural gas in such field, whichever time shall be the shorter.

(2) Without regard to any other provision of this Chapter, no producer or royalty owner of natural gas shall be required to pay more than the obligation provided under Article 3.01 of this Chapter unless he is also the severance beneficiary by virtue of selling such gas without a dedicated reserve contract.

(3) Without regard to any other provision of this Chapter no person or persons operating one or more gasoline plants, shall, in respect to the residue gas after processing in said plants, be liable for any tax hereunder.

(4) Collection of Tax.

(a) The tax hereby levied shall be a liability of the severance beneficiary. It shall be his duty to keep accurate records of all gas produced and all matters reasonably necessary or pertinent, as determined by the Comptroller, for the calculation and collection of the tax. The severance beneficiary shall remit the tax additionally levied by this Article. The tax levied herein shall be due and payable at the office of the Comptroller of Public Accounts at Austin on the last day of the calendar month based on the amount of gas produced during the preceding calendar month. Each person liable for the tax imposed herein shall make and deliver to the Comptroller a verified report on forms furnished by the Comptroller showing such information as the Comptroller may deem necessary for the administration and enforcement of this Arti-

cle. Such report shall be accompanied by legal tender or cashier's check payable to the State Treasurer for the proper amount of taxes herein levied.

(b) The Comptroller shall employ auditors and/or other technical assistants for the purpose of verifying reports and investigating the affairs of producers, including severance producers and dedicated reserve producers, to determine whether the tax is being properly reported and paid. He or they shall have the power to enter on the premises of any taxpayer liable for a tax under this Act and any other premises necessary in determining the correct tax liability, and to examine any books or records and to secure any information directly or indirectly concerned, according to law, and to promulgate rules pertinent to the enforcement of this Article which rules shall have the effect of law. Before any division or allotment of the tax collected hereunder is made, five-tenths per cent (.5%) of the gross amount of that tax shall be set aside in the State Treasury for the use of the Comptroller in the administration and enforcement of this Article; and so much of the said proceeds of a five-tenths per cent (.5%) of the occupation tax paid monthly as may be needed in such administration and enforcement is hereby set aside for such purposes, subject to appropriation by the Legislature.

(c) In the event that any taxpayer liable for a tax under this Act shall not file a report, the Attorney General shall have the right to enjoin such person until the delinquent tax is paid or said reports are filed, and venue is hereby fixed in Travis County.

(d) All persons having an obligation imposed by this Article shall be subject to a penalty of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) for violation thereof, each day's violation constituting a separate offense. The State shall have a prior lien for all delinquent taxes, penalties and interest on all property used by them or in their business of producing or purchasing gas, and if any of them shall fail to remit the proper taxes, penalties and/or interest due, the Comptroller may employ personnel to ascertain the correct amount due, and the person violating any of the provisions of this Article shall be liable, as ad-

ditional penalty, for the reasonable expenses or the reasonable value of such services of representatives of the Comptroller, incurred in such investigation and audit. The Attorney General shall file suit in the name of the State of Texas for all delinquent taxes, penalties, and other amounts due for the enforcement of all liens under this Article.

(e) The provisions of Article 3.09 of this Chapter shall also be applicable to the enforcement of the provisions of this Article, and where the terms "producer" or "purchaser" are used in that Article, they shall be construed to be broad enough to include "severance producer" and "dedicated reserve producer," as the case may be.

(5) Allocation of Revenues.

(a) The revenue derived under the provisions of this Article shall be allocated in the following manner:

I. Five-tenths per cent (.5%) for administration and enforcement as hereinabove provided;

II. One-fourth ( $\frac{1}{4}$ ) of the net revenue shall be allocated to the Available School Fund;

III. The remaining three-fourths ( $\frac{3}{4}$ ) shall be deposited in the Omnibus Tax Clearance Fund and shall be set aside for the purpose of transfer and allocation from the Omnibus Tax Clearance Fund to the Medical Assistance Fund as provided by Section 2 of Article XX of Chapter 184, Acts of the Forty-seventh Legislature, Regular Session, 1941, as amended, it being specifically provided that no portion of the revenues deposited to the Omnibus Clearance Fund by virtue of this Act shall be distributed or allocated to any other fund under the provisions governing the Omnibus Clearance Fund unless the needs of the Medical Assistance Fund have been met fully.

(b) "Revenue derived under the provision of this Act" as used in this Section means such revenue as may be added by virtue of the provisions of this Article 3.11 to that revenue which would otherwise be obtained under other provisions of law.

(6) In case two (2) or more persons pay under protest challenging the constitutionality of any portion of this Article, the Attorney General shall, within thirty (30) days after the filing of the second protest, institute a suit for declaratory judgment in the District Court of Travis County, Texas. In order to expedite

the decision in such case or cases, and also in suits filed by taxpayers under Article 1.05, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, any such cases involving the constitutionality of any portion of this Act shall be advanced to the top of the docket of any District or Appellate Court in which the cases might be filed or appealed.

(7) The provisions of this Article are hereby declared to be nonseverable; and if this Article or any portion thereof is declared invalid by a final judgment of a court of competent jurisdiction as to any severance beneficiary, it shall be invalid from the beginning as to the producer and all other severance beneficiaries. The provisions of this Article shall prevail over the provisions of the general severability clause at the end of this Act."

#### ARTICLE VII

Section 1. Chapter 1 of Title 122A, Taxation — General, Revised Civil Statutes of Texas, 1925, is amended by adding thereto a new Article to read as follows:

"Article 1.13. Acceptance of Postmark. Any payment, report, annual report, return, declaration, statement, or other document required by any provision of this Title which requires such payment, report, annual report, return, declaration, statement, or other document to be filed or made on or before a specific date, shall be deemed sufficiently complied with if said payment, report, annual report, return, declaration, statement, or document shall bear a postmark which is dated on or before the date required for such payment, report, annual report, return, declaration, statement, or document to be filed or made."

Sec. 2. Chapter 23 of Title 122A, Taxation — General, Revised Civil Statutes of Texas, 1925, is amended by adding thereto a new Article to read as follows:

"Article 23.07. Penalties. If any person shall fail to file a report as required herein or shall fail to pay to the Comptroller the tax as imposed herein when said report or payment is due, he shall forfeit five per cent (5%) of the amount due as a penalty, and after the first thirty (30) days he shall forfeit an additional five per cent (5%) of such tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per

annum beginning sixty (60) days from the date due."

Sec. 3. Sections (1), (3) and (4) of Article 3.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, are amended to read as follows:

"(1) The tax hereby levied shall be a liability of the producer of gas and it shall be the duty of each such producer to keep accurate records in Texas of all gas produced, making monthly reports as hereinafter provided."

"(3) The tax herein levied shall be due and payable at the office of the Comptroller at Austin on the last day of the calendar month, based on the amount of gas produced and saved during the preceding calendar month, and on or before said date each such producer shall make and deliver to the Comptroller a report on forms prescribed by the Comptroller showing the gross amount of gas produced, less the exclusions and at the pressure base set out herein, upon which the tax herein levied accrues, together with details as to amounts of gas, from what leases said gas was produced, the correct name and address of the first purchaser of said gas, and such other information as the Comptroller may desire; such report to be accompanied by legal tender or cashier's check payable to the State Treasurer for the proper amount of taxes herein levied. In no event shall a producer be relieved of responsibility for the tax until same shall have been paid, and provided, in the event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein the producer may bring legal action against such a purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make such payment and shall be entitled to reasonable attorney's fees and court costs incurred by legal action."

"(4) Provided, that unless such payment of tax on all gas produced during any month or fractional part thereof shall be made on or before the date due as hereinabove specified, such payment shall become delinquent and a penalty of five per cent (5%) of the amount of the tax shall be added, and after the first thirty (30) days

shall be forfeited an additional five per cent (5%) of such tax; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall bear interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due."

Sec. 4. Sections (7) and (10) of Article 4.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, are amended to read as follows:

"(7) The tax hereby levied shall be a liability of the producer of oil and it shall be the duty of such producer to keep accurate records of all oil produced, making monthly reports as hereinafter provided."

"(10) Provided, that unless such payment of tax on all oil produced during any month or fractional part thereof shall be made on or before the twenty-fifth of the month immediately following, such payment shall become delinquent and a penalty of five per cent (5%) of the amount of the tax shall be added, and after the first thirty (30) days shall be forfeited an additional five per cent (5%) of such tax; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall bear interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due."

Sec. 5. Article 4.06, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 4.06. Reports to Comptroller: Payment of Tax. At the time of filing the reports herein required, the first purchaser shall pay to the Comptroller by legal tender or cashier's check, payable to the State Treasurer, the tax herein required to be paid. Failure to pay said tax on the twenty-fifth day of the month immediately following shall cause said tax to become delinquent and a penalty of five per cent (5%) of the amount of said tax shall be added, and after the first thirty (30) days shall be forfeited an additional five per cent (5%) of said tax; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall bear interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due."

Sec. 6. Article 5.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 5.03. Failure to Pay Tax; Penalties. (1) Any person subject to the payment of said tax on sulphur failing to pay the tax levied in this Chapter within thirty (30) days after same is due and payable shall pay to the State as a penalty an additional amount equal to five per cent (5%) of the taxes due, and after the first thirty (30) days shall be forfeited an additional five per cent (5%) of said tax; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due. The Attorney General or any district or county attorney at the direction of the Attorney General shall bring suit in behalf of the State to recover the amount of taxes, penalties, and interest past due and payable by any person affected by this law. The word "person" as used in this law shall include persons, firms, partnerships, companies, corporations, associations, common law trusts, or other concern by whatever name or however organized, formed, or created."

(2) The Comptroller may require such other information and such additional reports as he may deem advisable."

Sec. 7. Article 11.11, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 11.11. Penalty for Failure to Pay Tax. Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty (30) days from the date when said tax is required by this Chapter to be paid, shall forfeit and pay to the State of Texas a penalty of five per cent (5%) upon the amount of such tax, and after the first thirty (30) days he shall forfeit an additional five per cent (5%) of such tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due."

Sec. 8. Article 12.09, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 12.09. Initial Reports.

Where a domestic corporation is chartered in this State or where a foreign corporation which has heretofore done no business in this State

and is granted a permit to do business in Texas it shall file its first report within ninety (90) days from the expiration of one (1) year from the date such charter was filed or permit was granted, as the case may be, showing its condition as of the end of the month nearest the end of such first year."

Sec. 9. Article 12.14, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 12.14. Failure to Pay Tax and File Reports.

Any corporation, either domestic or foreign, which shall fail to pay any franchise tax provided for in this Chapter when the same shall become due and payable under the provisions of this Chapter, or shall fail to file any report provided for in this Chapter, when the same shall become due, shall thereupon become liable to a penalty of five per cent (5%) of the amount of such franchise tax due by such corporation, and if said report has not been filed or said taxes have not been paid within thirty (30) days from the date said report or taxes shall have become due, an additional five per cent (5%) of such tax shall be forfeited; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due. If the reports required by Articles 12.08, 12.09 and 12.19 be not filed in accordance with the provisions of this Chapter, or if the amount of such tax and penalties be not paid in full on or before the thirtieth day after notice of delinquency is mailed to such corporation, such corporation shall for such default forfeit its right to do business in this State; which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation the words, "right to do business forfeited" and the date of such forfeiture. Any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this State, except in a suit to forfeit the charter or permit of such corporation. In any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation unless its right to do busi-

ness in this State shall be revived as provided in this Chapter. Each director and officer of any corporation whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation, which shall include all franchise taxes and penalties thereon which shall become due and payable subsequent to the date of such forfeiture, and which may be created or incurred, with his knowledge, approval and consent, within this State, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporations were partners."

Sec. 10. Article 12.15, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 12.15. Notice of Forfeiture.

The Secretary of State shall notify each domestic and foreign corporation which may be or become subject to a franchise tax under the laws of this State, which has failed to file such report or pay franchise tax on or before the first day of May, that unless such overdue report is filed or such overdue tax together with said penalties thereon shall be paid within thirty (30) days of the mailing of such notice, the right of such corporation to do business in this State will be forfeited without judicial ascertainment. Such notice may be either written or printed and shall be verified by the seal of the office of the Secretary of State, and shall be addressed to such corporation and mailed to the post office named in its articles of incorporation as its principal place of business, or to any other known place of business of such corporation. A record of the date of mailing such notice shall be kept in the office of the Secretary of State, and such notice and record thereof shall constitute legal and sufficient notice thereof for all purposes of this Chapter. Any corporation whose right to do business may have been forfeited, as provided in this Chapter, shall be relieved from such forfeiture by paying to the Secretary of State at any time prior to the forfeiture of the charter or permit of such a corporation, as hereinafter provided, the full amount of the franchise taxes, penalties and interest due by it. When such taxes,

penalties, and interest shall be paid to the Secretary of State, he shall revive the right of the corporation to do business within the State by cancelling the words, "right to do business forfeited," upon his record and endorsing thereon the word "revived," and the date of such revival. If any domestic corporation or foreign corporation, whose right to do business within this State shall hereafter be forfeited under the provisions of this Chapter, shall fail to pay the Secretary of State within one hundred and twenty (120) days after such forfeiture, the amount necessary to entitle it to have its right to do business revived under the provisions of this Chapter, such failure shall constitute sufficient ground for the forfeiture, by judgment of any court of competent jurisdiction, of the charter of such domestic corporation, or of the permit of such foreign corporation. It shall be the duty of the Secretary of State, after such one hundred and twenty (120) days next following such forfeiture, to certify to the Attorney General the names of all corporations, domestic and foreign, whose right to do business within this State shall have been forfeited as hereinbefore provided, and upon receiving such certificate the Attorney General shall forthwith institute suit against such corporations under the provisions of Article 12.16 of this Chapter."

Sec. 11. Section (3) of Article 12.19, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"(3) The Secretary of State shall prescribe the form of reports to be made by any corporation electing to pay its franchise tax under the provisions of this Article. The Secretary of State may require such reports to contain any or all information required under Articles 12.08, 12.09, 12.11, or 12.12 of this Chapter.

There shall be submitted with the report a signed copy of the corporation's federal income tax return for the period described in Subsection (2) of this Article. All franchise tax reports and income tax returns furnished to the Secretary of State under the provisions of this Article shall be confidential in nature and treated as such by the Secretary of State under the same conditions as provided in Article 12.10. The Secretary of State or the State Auditor may in the execution of this Article cause the books

of any corporation electing to pay franchise taxes under this Article to be examined, whether such books be located within this State or any other state within the United States. The Secretary of State may make any rules or regulations necessary for the administration of this Article."

Sec. 12. Article 17.04, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

#### Article 17.04. License Period.

All licenses shall be so issued as to expire on the thirty-first day of December of each year. On or before the thirty-first day of December of each year every person, agent, receiver, trustee, firm, corporation, association, or copartnership having a license shall apply to the Comptroller of Public Accounts for a renewal license for the calendar year next ensuing. All applications for renewal licenses shall be made on forms which shall be prescribed and furnished by the Comptroller of Public Accounts. Each such application for a renewal license shall be accompanied by a filing fee of One Dollar (\$1) for each store or mercantile establishment operated or to be operated and by the license fee as prescribed in Article 17.05 of this Chapter. This application shall be mailed to the Comptroller and accompanying the application and the application fee shall be the amount of license due under the provisions of this Chapter. Those applications not mailed and which require the visit of a member of the Comptroller's staff for the collection of the application fee or the license fee shall pay a service fee of Five Dollars (\$5) for each store. If the application is not received by the due date there shall be added to the amount of the license fee a penalty of five per cent (5%) thereof, and after the first thirty (30) days an additional five per cent (5%) of such fee shall be forfeited; said penalty shall never be less than One Dollar (\$1). Delinquent fees shall bear interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due."

Sec. 13. Article 18.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 18.03. Penalties. If any person shall violate any of the provisions hereof, he shall forfeit to the

State of Texas as a penalty not less than Twenty-five Dollars (\$25), and not more than One Thousand Dollars (\$1,000) for each violation, and each day's violation shall constitute a separate offense. If any person shall fail to pay said tax promptly he shall forfeit five per cent (5%) thereof as a penalty, and after the first thirty (30) days he shall forfeit an additional five per cent (5%) of said tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due. The State shall have a prior lien for all delinquent taxes, penalties and interest on all of the property used by the distributor in his business of distributing, selling and/or using cement."

Sec. 14. Sections (3) and (5) of Article 19.02, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, are amended to read as follows:

"(3) The tax hereby imposed shall be at the rate of 2.42 per cent of the gross amount received from the services or duty specified above after deducting from such gross amount the reasonable value at the well of any material used, consumed, expended in or incorporated into the well. The amount received from such taxable services during the calendar month next preceding shall be reported by the person subject to the tax imposed hereby on a form prescribed and furnished by the Comptroller and the tax thereon shall be paid to the Comptroller at his office in Austin, Texas, on or before the twentieth day of each month."

"(5) If any person shall violate any provisions of this Article, he shall forfeit to the State of Texas, as a penalty, the sum of not less than Twenty-five Dollars (\$25), and not more than Five Hundred Dollars (\$500) for each violation, and each day's violation shall constitute a separate offense. If any person shall fail to pay said tax when the same shall become due, he shall forfeit five per cent (5%) thereof as a penalty, and after the first thirty (30) days, he shall forfeit an additional five per cent (5%) of said tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum be-

ginning sixty (60) days from the date due. The State shall be secured for all taxes, penalties, interests and costs due by any person under the provisions of this Article by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property used by said person in his business."

Sec. 15. Section (1) of Article 21.04, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"(1) In the event any person, firm, association of persons, or corporation who operates any place of amusement as designated in this Chapter upon which an admission tax is due shall fail or refuse to pay said tax to the Treasurer of this State on or before the date provided in this Chapter, he shall forfeit to the State of Texas not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) for each violation, and each day's delinquency shall constitute a separate offense. Provided that in addition to the penalties shown, if any person, firm, association of persons, or corporation shall fail to pay said tax or file such report as required by this Chapter when the same shall be due, he shall forfeit five per cent (5%) of the amount of the tax due as a penalty, and after the first thirty (30) days, he shall forfeit an additional five per cent (5%) of such tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due. Venue for the collection of such penalties by suit shall be in Travis County, Texas."

#### ARTICLE VIII

Section 1. This Act shall be effective from and after September 1, 1961. Provided, however, that Article V of this Act shall become effective from and after August 31, 1961.

Sec. 2. All laws or parts of laws in conflict herewith are repealed to the extent of the conflict.

Sec. 3. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and

to this end the provisions of this Act are declared to be severable.

Sec. 4. The State of Texas, facing the greatest financial crisis in its history, requires additional revenue to retire the General Fund deficit and to provide money for schools, mental hospitals, medical aid to elder citizens, the prison system, and the orderly operation of State Government for a growing population and an expanding economy. Concern for the health and welfare of all the people of Texas must be paramount. Especially is it vital to provide the funds whereby Texas children may receive free public education as promised by the Constitution, which is essential to the future of Texas. This urgent need creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and that this Act shall take effect and be in force from and after September 1, 1961, except Article V, which shall take effect and be in force from and after August 31, 1961, and it is so enacted.

The report was read.

On motion of Senator Martin and by unanimous consent the Senate agreed to vote on the Conference Committee Report on H. B. No. 20 at 11:35 o'clock p.m. today.

The Conference Committee Report on H. B. No. 20 was adopted by the following vote:

Yeas—23

Aikin	Martin
Baker	Moffett
Calhoun	Moore
Creighton	Owen
Crump	Parkhouse
Dies	Ratliff
Fuller	Reagan
Hardeman	Roberts
Hazlewood	Secrest
Herring	Smith
Hudson	Weinert
Lane	

Nays—8

Colson	Patman
Gonzalez	Rogers
Kazen	Schwartz
Krueger	Willis

Conference Committee Report  
on Senate Bill 1

Senator Roberts submitted the following Conference Committee Report on S. B. No. 1:

Austin, Texas,  
August 8, 1961.

Hon. Ben Ramsey, President of the Senate.

Hon. James A. Turman, Speaker of the House of Representatives.

Sirs: We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S. B. No. 1, have met and had same under consideration, and beg to report it back with the recommendation that it do pass in the form attached.

ROBERTS  
MARTIN  
AIKIN  
HAZLEWOOD  
LANE

On the part of the Senate.

BUCHANAN  
McGREGOR of  
El Paso  
DEWEY

On the part of the House.

The report was read and was adopted by the following vote:

. Yeas—22

Aikin	Martin
Calhoun	Moffett
Colson	Moore
Creighton	Owen
Dies	Parkhouse
Fuller	Reagan
Hazlewood	Roberts
Herring	Schwartz
Hudson	Secrest
Kazen	Smith
Lane	Willis

Nays—8

Baker	Patman
Crump	Ratliff
Hardeman	Rogers
Krueger	Weinert

Present—Not Voting

Gonzalez

### Conference Committee Report on Senate Bill 1 Ordered Not Printed

On motion of Senator Roberts and by unanimous consent the Conference Committee Report on S. B. No. 1 was ordered not printed in the daily Senate Journal as it will be printed as a supplement to the Senate Journal.

### Bill and Resolution Signed

The President signed in the presence of the Senate after the caption had been read, the following bill and resolution:

S. C. R. No. 30, Suspending Joint Rules to consider H. B. No. 8 at any time.

S. B. No. 10, A bill to be entitled "An Act creating El Paso County Water Authority, a Conservation Authority under Article XVI, Section 59, of the Constitution, comprising certain territory contained within El Paso County, Texas, etc., and declaring an emergency."

### Conference Committee Report on Senate Bill 1 Ordered Printed as Supplement to Senate Journal

On motion of Senator Aikin and by unanimous consent 1,500 copies of the Conference Committee Report on S. B. No. 1 were ordered printed as a supplement to the Senate Journal.

### At Ease

The President announced at 11:46 o'clock p.m. that the Senate would stand At Ease until 11:55 o'clock p.m.

### In Legislative Session

The President called the Senate to order as In Legislative Session at 11:56 o'clock p.m.

### Message from the House

Hall of the House of Representatives  
Austin, Texas,  
August 8, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H. C. R. No. 48, Authorizing the Enrolling and Engrossing Clerk to

make any necessary technical corrections in House Bill No. 20.

Respectfully submitted,

DOROTHY HALLMAN,  
Chief Clerk, House of Representatives

### Bills Signed

The President signed in the presence of the Senate after the caption had been read, the following bill:

S. B. No. 1, A bill to be entitled "An Act appropriating money for the support of the Judicial, Executive, and Legislative branches of the State Government, for the construction of State Buildings, the payment of claims against the State, local expenses of Soil Conservation Districts, and for State aid to designated public junior colleges, for the two-year period beginning September 1, 1961, and ending August 31, 1963; authorizing and prescribing conditions, limitations, rules and procedures for allocating and expending the appropriated funds; and declaring an emergency."

[Subject to provisions of Section 49a of Article III of the Constitution of the State of Texas.]

### House Concurrent Resolution 48 on Second Reading

The President laid before the Senate on its second reading the following resolution:

H. C. R. No. 48, Authorizing Enrolling Clerk to make certain corrections in H. B. No. 20.

The resolution was read.

By unanimous consent the resolution was considered immediately and was adopted.

### Bills and Resolutions Signed

The President signed in the presence of the Senate after the captions had been read, the following bills and resolutions:

H. B. No. 24, A bill to be entitled "An Act to establish a State Water Pollution Control Board, and to provide for the control, prevention and abatement of pollution of the surface and underground waters of the State; repealing Articles 4444, 7621a, and

7577, Revised Civil Statutes of Texas, and Article 698b, Penal Code of Texas, effective January 1, 1962; providing a saving clause; and declaring an emergency."

H. B. No. 37, A bill to be entitled "An Act amending Section 9 of Chapter 50, Acts of the 55th Legislature, Regular Session, 1957, relating to the regulatory authority of the Game and Fish Commission in certain counties, by withdrawing the veto power of the Commissioners Court in Llano County over orders, rules or regulations of the Game and Fish Commission promulgated for that County; and declaring an emergency."

H. C. R. No. 46, Granting permission to suspend the Joint Rules to take up and consider H. B. No. 52 at any time.

H. B. No. 52, A bill to be entitled "An Act providing for enforcement of the Water Safety Act by game wardens on certain lakes; etc.; and declaring an emergency."

H. B. No. 15, A bill to be entitled "An Act transferring from net revenues collected pursuant to Articles 702 and 706 of Chapter 7 of H. B. No. 11, Acts of the Fifty-sixth Legislature, Third Called Session, 1959, Chapter 1 (cigarette tax) the sum of \$500,000 to the Legislative Expense Fund; appropriating said sum for the expenses of the Legislature; and declaring an emergency."

[Signed subject to provisions of Section 49A of Article III of the Constitution of the State of Texas.]

H. B. No. 20, A bill to be entitled "An Act providing additional revenue for the support of the State government amending Chapter 3, Title 122A, Revised Civil Statutes of Texas, providing a minimum tax of one-cent per MCF on natural gas production with the difference between the present tax and the minimum being levied on dedicated reserve severance beneficiaries; amending Arts. 12.01 and 12.02 of Chapter 12, Title 122A, Revised Civil Statutes of Texas, excluding manufacturing debt from the corporation franchise tax base for five years and providing for a two-factor allocation formula for this tax; amending Chapter 20, Title

122A, Revised Civil Statutes of Texas to provide for a limited excise, sales and use tax; amending Arts. 6.01 and 6.03 of Chapter 6, Title 122A, Revised Civil Statutes of Texas, increasing the tax on motor vehicle sales; increasing the operator's, Commercial operator's and chauffeur's license fees as provided by Sec. 19, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended and allocating the increased revenue to the General Revenue Fund; amending Art. 9.25 of Chapter 9, Title 122A, Revised Civil Statutes of Texas, requiring allocation of motor fuel tax revenue to the Available School Fund in August each year; making allocations of revenue; providing for the transfer of funds; providing an effective date; repealing Chapter 22, Title 122A, Revised Civil Statutes of Texas and all other laws in conflict; providing for severability; and declaring an emergency."

H. C. R. No. 48, Authorizing Enrolling Clerk to make certain correction in H. B. No. 20.

#### Committee to Notify the Governor

The President announced the appointment of the following as a Committee to notify the Governor that the Senate was ready to adjourn sine die:

Senators: Reagan, Crump and Colson.

#### Committee to Notify the House

The President announced the appointment of the following as a committee to notify the House that the Senate is ready to adjourn sine die:

Senators Colson, Parkhouse, Reagan and Crump.

#### Governor Notified

The committee to notify the Governor that the Senate was ready to adjourn sine die appeared at the Bar of the Senate and Senator Colson for the committee reported that the committee had performed the duty assigned it.

#### House Notified

The committee to notify the House of Representatives that the Senate was ready to adjourn sine die appeared at the Bar of the Senate and

Senator Colson for the committee reported that the committee had performed the duty assigned it.

#### Senate Notified

A committee from the House of Representatives appeared at the Bar of the Senate and Representative McIlhaney for the committee notified the Senate that the House was ready to adjourn sine die.

#### Welcome and Congratulatory Resolutions

S. R. No. 75—By Senator Kazen: Extending welcome to Mr. and Mrs. Esteban Garcia of Encino.

S. R. No. 76—By Senator Aikin: Extending welcome to Mr. and Mrs. A. J. Holbrook and daughter of Linden.

S. R. No. 77—By Senator Aikin: Extending welcome to Mr. and Mrs. Bill Jones and children of Paris.

S. R. No. 78—By Senator Willis: Extending congratulations to Amusement Park "Six Flags Over Texas," in Tarrant County.

S. R. No. 79—By Senators Schwartz and Parkhouse: Extending welcome to Bill Susman, Keith Susman, et al.

S. R. No. 80—By Senator Gonzalez: Extending welcome to Chief Justice and Mrs. W. O. Murray and grandson.

S. R. No. 82—By Senator Aikin: Extending welcome to Mr. and Mrs. Dudley Bozeman.

S. R. No. 85—By Senator Schwartz: Extending congratulations to Mrs. Elizabeth Ann Weimer of Alvin on her 101st birthday.

#### Memorial Resolutions

S. R. No. 83—By Senator Baker: Memorial resolution for Wilfred E. (Jack) Sanders.

S. R. No. 84—By Senator Baker: Memorial resolution for Roderick John Watts.

#### Adjournment Sine Die

The President announced that the hour for final adjournment of the First Called Session of the Fifty-seventh Legislature had arrived.

Senator Colson moved that the Senate stand adjourn sine die.

The motion prevailed and the President declared the First-Called session of the Fifty-seventh Legislature adjourned sine die at 11:59 o'clock p.m.